ETHICS PLEDGE

As a condition, and in consideration, of my employment in the United States Government in an appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.

2. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions.

3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

6. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

7. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 28, 2017, which I have read before signing this document, defines certain terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.

David Burhance
Signature

8/10, 2017
Date

David Leigh Bernhardt
Print or type your full name (last, first, middle)

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Sat, Jul 14, 2018 at 3:15 PM
To: "Rees, Gareth" <gareth_rees@ios.doi.gov>
Cc: "Connors, Margaret" <margaret.connors@sol.doi.gov>, "Bernhardt, David" <(b) (6) os.doi.gov>

Hi Gareth,

After reviewing the invitation sent by the API to the Deputy Secretary to speak at the API Upstream Committee meeting on July 17, 2018 in Washington, DC, we have determined that there is no legal objection to Deputy Secretary Bernhardt's acceptance, on behalf of the Department of the Interior (DOI), of this invitation. It is our understanding that **his attendance will be in his official capacity** and that he will be making official remarks and presenting information on behalf of DOI and the U.S. Government at this event. We further understand that employees of approximately 30 separate organizations are expected to attend the meeting and that at least two of the expected attendees (1) are the Deputy Secretary's former clients under the administration ethics pledge and (2) have a covered relationship with the Deputy Secretary under 5 CFR 2635.502.

Official Capacity Speech – The Deputy Secretary has reasonably determined that attendance at the API Upstream Committee meeting is part of his official duties and is an appropriate forum to present information on behalf of the DOI and the Government. The meeting will be from 8:00 am to 2:00 pm at API headquarters. The Deputy Secretary is expected to provide a 20-25 minute presentation to be followed by a 20-25 minute question and answer period. We understand that the Deputy Secretary's formal remarks as a speaker at the meeting will focus on matters related to the Department's mission, including the Outer Continental Shelf Financial Assurance Program. The Deputy Secretary will also have the opportunity to communicate with various attendees at the event about the mission of the DOI and to present information on behalf of the Administration relating to the President's policy goals and priorities.

Since the Deputy Secretary's attendance at this event will be in his official capacity, he may accept any meal, refreshments, entertainment, instruction, or materials furnished to all attendees as an integral part of the meeting on July 17, 2018. 5 C.F.R. 2635.203(b)(8). Additionally, any Department staff whose presence at the meeting is essential to the Deputy Secretary's participation and presentation of official remarks may also accept free attendance at the event pursuant to 5 C.F.R. 2635.203(b)(8)(ii).

Please note the following guidelines for the Deputy Secretary speaking/presenting information in an official capacity:

1. **Ethics Pledge and 5 CFR 2635.502** - To avoid potential violation of the administration ethics pledge and 5 CFR 2635.502, the Deputy Secretary must not participate in the discussion of any particular matter involving a specific party or parties during his presentation or at any other time during the event.
2. **Official Title** – Use of his official title is permitted as the Deputy Secretary will be attending and presenting in his official capacity. 5 C.F.R. 2635.702.
3. **Endorsement** – We remind the Deputy Secretary that he may not use his official Government position or title or any authority associated with his public office to endorse any product, service, or enterprise, including non-profit and charitable organizations that may have some affiliation with DOI. 5 C.F.R. 2635.702(c).
4. **Nonpublic Information** – The Deputy Secretary may not discuss at this event any nonpublic information he has gained by reason of his Federal position. 5 C.F.R. 2635.703.
5. **No Partisan Political Activity** – While the Deputy Secretary may discuss the Administration's policy priorities and ideological approach to proposed laws and regulations (especially in regard to DOI-related issues), he must strictly avoid partisan political activity in order to remain in compliance with the Hatch Act. Partisan political activity is any activity directed towards the success or failure of a political party, candidate for a partisan political office, or partisan political group and can include verbal remarks and speech.

Please do not hesitate to contact us if you have any questions or concerns, or if we can be of any additional assistance.

Thanks very much,

Ed

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--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6)

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Fri, Jul 13, 2018 at 4:30 PM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> Hi,
>
> Just wanted to quickly follow-up on this to confirm that it is okay for David to speak at this event on Tuesday.
>
> Thanks
>
> On Thu, May 31, 2018 at 4:03 PM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:
>
> > Gareth:
> >
> > After reviewing the meeting request for DB to address Upstream Members at API and after reviewing the meeting participant list, both Nobel Energy and Halliburton appeal on DB's recusal letters. Accordingly, DB is recused from discussing particular matters involving specific parties in which Halliburton is a party or represents a party (5 CFR 2635.502). Further and according to the Ethics Pledge, DB is prohibited from participation in any meeting or communication with (Nobel Energy or Halliburton) unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

Markee

---------- Forwarded message ----------
From: **Connors, Margaret** <margaret.connors@sol.doi.gov>
Date: Wed, May 30, 2018 at 1:08 PM
Subject: Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Ed:

After reviewing the meeting request for DB to address Upstream Members at API and after reviewing the meeting participant list, both Nobel Energy and Halliburton appeal on DB's recusal letters. Accordingly, DB is recused from discussing particular matters involving specific parties in which Halliburton is a party or represents a party (5 CFR 2635.502). Further and according to the Ethics Pledge, DB is prohibited from from participation in any meeting or communication with (Nobel Energy or Halliburton) unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

Markee

On Wed, May 30, 2018 at 9:42 AM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:
> Is it a lunch, meeting with coffee & pastries? If so, we may need to document this. Will others be present? How many?
>
> Markee
>
> On Wed, May 30, 2018 at 9:31 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:
> > There is no charge for the event. API invites its Upstream Committee to DC and then invite guest speakers to attend. Is there still a need for a WAG as there is not cost?
> >
> > On Wed, May 30, 2018 at 9:25 AM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:
> > > Did you fill out a WAG for this event? If not, please do so and send it to me. I looked and I do not have a WAG from you.
> > >
> > > Markee
> > >
> > > On Wed, May 30, 2018 at 9:12 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:
> > > > Just confirmed that David would like to speak at this if cleared by Ethics. David talk about big picture issues and no party specific issues. Let me know what further information you need.
> > > > Thanks
> > > >
> > > > On Tue, May 29, 2018 at 1:31 PM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:
> > > > > David is likely to say yes to do this so wanted to get down to you asap. Thanks
> > > > >
> > > > > ---------- Forwarded message ----------
> > > > > From: **Erik Milito** <militoe@api.org>
> > > > > Date: Tue, May 29, 2018 at 1:11 PM
> > > > > Subject: RE: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
> > > > > To: "Rees, Gareth" <gareth_rees@ios.doi.gov>
> > > > >
> > > > > Gareth,
> > > > >
> > > > > Please attached for the form, and an additional document that I reference in the form itself.
> > > > >
> > > > > Thanks.

Erik

From: Rees, Gareth <gareth_rees@ios.doi.gov>
Sent: Tuesday, May 29, 2018 11:14 AM
To: Erik Milito <militoe@api.org>
Subject: Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

Hi Erik

Thank you for the request. Would you be able to complete the attached form. Once I have received the completed form, I will run it through Ethics and get back to you.

thanks

Gareth

On Thu, May 24, 2018 at 3:15 PM, Erik Milito <militoe@api.org> wrote:

> Gareth,
>
> API's Upstream Committee will be in DC on July 17th and it would be great if Mr. Bernhardt could join us as a guest speaker. The committee is comprised of executives from the companies listed in the attachment, and the committee is responsible for overseeing U.S. exploration and production policy efforts. The meeting will be from 8:00 am until 2:00 pm at API headquarters, located at 1220 L Street NW. We could accommodate Mr. Bernhardt during whatever time block is best for him. Our guest speakers from Interior normally give a 20-25 minute presentation and then we leave 20-25 minutes for question and answer.
>
> Please let me know if this can be arranged.
>
> Thank you.
>
> Best regards,
>
> Erik
>
> Erik Milito
>
> Group Director, Upstream & Industry Operations

American Petroleum Institute

1220 L Street, NW

Washington, DC 20005

Ph: (202) 682-8273

Fx: (202) 682-8426

militoe@api.org



This transmission contains information that is privileged and confidential and is intended solely for use of the individual(s) listed above. If you received the communication in error, please notify me immediately. Any dissemination or copying of this communication by anyone other than the individual(s) listed above is prohibited.

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6)

--

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--

Margaret "Markee" S. Connors
Department Ethics Office
U.S. Department of the Interior
1849 C Street, NW
Room 5311
Washington, DC 20240
Phone: 202-513-0325

--

Gareth C. Rees

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--

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--

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--

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--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6) [redacted]

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

May 26, 2009
DO-09-020

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick
Director

SUBJECT: Ethics Pledge Issues: Speeches and Pledge Paragraph 2; Intergovernmental Personnel Act Detailees

The Office of Government Ethics (OGE) continues to work with the White House Counsel's Office to identify and answer various questions concerning Executive Order 13490 and the Ethics Pledge for non-career appointees. OGE thought it would be useful to advise agency ethics officials of the resolution of two questions that recently arose at several agencies. The first question concerns how to apply paragraph 2 of the Pledge to an appointee who gives an official speech at an event sponsored by a former employer or client. The second question is whether the Pledge applies to non-Federal personnel detailed to an agency under the Intergovernmental Personnel Act. The answers to these questions are set out below.

Speeches and the Effect of Pledge Paragraph 2

OGE and the White House have received numerous questions about whether paragraph 2 of the Ethics Pledge prohibits an appointee from giving an official speech at an event sponsored by a former employer or client. Paragraph 2 prohibits appointees from participating, for two years after their appointment, in any particular matter involving specific parties that is directly and substantially related to a former employer or client. (Paragraph 2 is discussed in more detail in DO-09-011, http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09011.pdf.) With regard to speeches and presentations made in an official capacity OGE, in consultation with the White House Counsel's Office, has determined that the Pledge is not intended to prohibit an appointee from participating in an official speech unless the speech would have a demonstrable financial effect on the former employer or client.[1]

[1] It is important to note that the Pledge does not apply to speeches given in an appointee's personal capacity. Presentations given in one's personal capacity may be subject to other ethics provisions, including 5 C.F.R. § 2635.807, 5 C.F.R. § 2635.808(c), and 5 C.F.R. part 2636.

By way of background, OGE has addressed the application of 18 U.S.C. § 208 and 5 C.F.R. § 2635.502 to official speeches on several occasions. *See, e.g.*, OGE Informal Advisory Letters 98 x 14; 96 x 2; 94 x 14. For purposes of section 208, OGE generally has viewed the decision to give an official speech as a particular matter. 96 x 2 (Ed. Note); *cf.* OGE, *Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment* 8 (January 2006)(application of 18 U.S.C. § 205 to request for Government speaker). An employee is prohibited from giving an official speech to an organization whose interests are imputed to the employee under section 208, if the speech would have a direct and predictable effect on the organization's financial interest. In OGE's experience, usually the sponsor of an event will have a financial interest in an official speech only if an admission fee is charged, the event is a fundraiser, or the event is some kind of business development activity (such as a seminar for current or prospective clients).

For purposes of 5 C.F.R. § 2635.502, OGE also generally has viewed the decision to give an official speech as a particular matter involving the event sponsor as a specific party. OGE 98 x 14; OGE 94 x 14. If an employee has a covered relationship with the sponsor--for example, the sponsor is a former employer under section 2635.502(b)(1)(iv)--the employee should not participate in an official speech if a reasonable person would question his or her impartiality, absent an authorization under section 2635.502(d). OGE 94 x 14. Nevertheless, OGE certainly is aware of cases in which agencies have determined either that the circumstances surrounding the speech really did not raise any reasonable impartiality concerns or that any such concerns were outweighed by the need for the employee's services. *See* 5 C.F.R. § 2635.502(c), (d). In such cases, agency ethics officials often still will emphasize that the employee should not use the same organization as a preferred forum for repeated speeches when other comparable forums are available.

Pledge paragraph 2, of course, is similar in many respects to section 2635.502, including the focus on particular matters involving specific parties. *See* DO-09-011. Consistent with how speeches have been treated for purposes of 18 U.S.C. § 208 and 5 C.F.R. § 2635.502, the Pledge was not intended to sweep every official speech to a former employer or client under the bar of Pledge paragraph 2. The Executive order elsewhere recognizes that making a speech does not necessarily reflect a close affinity with the event sponsor. *See* Exec. Order 13490, sec. 2(j)(definition of former client excludes services limited to speech or similar appearance). While paragraph 2 does not include the same "reasonable person" clause as section 2635.502, the Pledge provision was not intended to bar speeches that do not implicate the underlying concerns about special access to Government decisionmakers who can bestow regulatory and financial benefits on former associates. *Cf. U.S. v. Sun-Diamond Growers*, 526 U.S. 398, 407 (1999)(dicta)(official speech to farmers about USDA policy should not be viewed as official act implicating illegal gratuities statute). In many cases, the sponsor will have an academic or policy interest in the subject matter of the speech but no direct pecuniary interest in hosting the speech itself.

This does not mean that paragraph 2 is wholly inapplicable to official speeches. Where the decision to give an official speech actually would affect the financial interests of the sponsor,

the concerns under the Pledge about special access are relevant. Thus, if the former employer or client charges an admission fee or organizes the event for the purpose of fundraising or business development, the appointee will be barred from giving an official speech, absent a waiver under section 3 of the Executive Order. Even where Pledge paragraph 2 is inapplicable, ethics officials are reminded to analyze any official speaking engagements under 18 U.S.C. § 208 and 5 C.F.R. § 2635.502, as discussed above.

Detailees under the Intergovernmental Personnel Act Are Not Subject to the Pledge

Several agencies have asked whether detailees under the Intergovernmental Personnel Act (IPA) are required to sign the Pledge. The short answer is no.

The IPA provides for the temporary assignment of personnel from certain non-Federal entities to Federal agencies. 5 U.S.C. § 3372; *see generally* DO-06-031, http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2006/do06031.pdf. The IPA clearly distinguishes between those who actually are appointed by an agency and those who are merely detailed from a non-Federal entity to an agency. 5 U.S.C. § 3374(a)(1),(2). IPA detailees from academia, State and local government, and non-profit entities may serve in executive branch agencies for two years with the possibility of a two year extension. While working in the executive branch, detailees remain employed by their institution or organization and return to their employer when the detail is over. Simply put, IPA detailees are not appointees at all. Therefore, they are not subject to the Pledge, which applies to "every *appointee* in every executive agency *appointed* on or after January 20, 2009." Exec. Order 13490, sec. 1 (emphasis added); *see also id.*, sec. 2(b).

This analysis would not apply to any personnel who actually receive an appointment under the IPA. However, as a general matter, OGE rarely encounters questions about IPA appointees. Agency ethics officials should contact OGE if they have any question about whether a particular IPA appointee should be considered a non-career appointee subject to the Pledge. *See generally* DO-09-010 (discussing criteria for appointments subject to Pledge).

Label: "SOL FOIA 2018 - 00129"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:14 AM

Conversation Contents

Pressing Question

David Bernhardt (b) (6) @ios.doi.gov>

From:	David Bernhardt <(b) (6) ios.doi.gov>
Sent:	Tue May 08 2018 06:09:10 GMT-0600 (MDT)
To:	edward.mcdonnell@sol.doi.gov
Subject:	Pressing Question

Ed: A group of water district managers want to discuss Reclamation's handling of Oakdale Irrigation District's and South San Joaquin Irrigation District's release of supplemental water under to the State of California's Department of Water Resources and San Luis Delta Mendota Water Authority for a few minutes while I'm in California.

In evaluating the situation, here are the facts. I have not represented these specific parties, and my former firm does not represent them in this particular matter involving specific parties - or in any other matter to my knowledge.

However, one of my former clients Westlands Water District is one of the 29 public water agencies that are Members of San Luis Mendota Water Authority. To facilitate your review, here is a background on the authority. The San Luis & Delta-Mendota Water Authority was established in January of 1992 and consists of water agencies representing approximately 29 federal and exchange water service contractors within the western San Joaquin Valley, San Benito and Santa Clara counties.

Here are the member Districts. It's a diverse group.

Member Agencies

Banta-Carbona Irrigation District

Broadview Water District

Byron Bethany Irrigation District (CVPSA)

Central California Irrigation District

City of Tracy

Columbia Canal Company (a Friend)

Del Puerto Water District

Eagle Field Water District

Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water District

Santa Clara Valley Water District

Tranquillity Irrigation District

Turner Island Water District

West Side Irrigation District

West Stanislaus Irrigation District

Westlands Water District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water

agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Tue May 08 2018 07:48:58 GMT-0600 (MDT)
To:	David Bernhard (b) (6) @ios.doi.gov>
CC:	Scott De La Vega <scott.delavega@sol.doi.gov>
Subject:	Re: Pressing Question

Hi David,

I've got this and I'm reviewing it.

Thanks,
Ed

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--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Tue, May 8, 2018 at 8:09 AM, David Bernhard (b) (6) @ios.doi.gov> wrote:

> Ed: A group of water district managers want to discuss Reclamation's handling of Oakdale Irrigation District's and South San Joaquin Irrigation District's release of supplemental water under to the State of California's Department of Water Resources and San Luis Delta Mendota Water Authority for a few minutes while I'm in California.
>
> In evaluating the situation, here are the facts. I have not represented these specific parties, and my former firm does not represent them in this particular matter involving specific parties - or in any other matter to my knowledge.
>
> However, one of my former clients Westlands Water District is one of the 29 public water agencies that are Members of San Luis Mendota Water Authority. To facilitate your review, here is a background on the authority. The San Luis & Delta-Mendota Water Authority was established in January of 1992 and consists of water agencies representing approximately 29 federal and exchange water service contractors within the western San Joaquin Valley, San Benito and Santa Clara counties.
>
> Here are the member Districts. It's a diverse group.
>
> ## Member Agencies
>
> Banta-Carbona Irrigation District
>
> Broadview Water District
>
> Byron Bethany Irrigation District (CVPSA)
>
> Central California Irrigation District
>
> City of Tracy
>
> Columbia Canal Company (a Friend)
>
> Del Puerto Water District
>
> Eagle Field Water District

Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water District

Santa Clara Valley Water District

Tranquillity Irrigation District

Turner Island Water District

West Side Irrigation District

West Stanislaus Irrigation District

Westlands Water District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Tue May 08 2018 07:52:30 GMT-0600 (MDT)
To:	David Bernhardt <(b) (6) t@ios.doi.gov>
Subject:	Re: Pressing Question

Hi David,

To clarify, I'm at Emergency Management Training.

Thanks,
Ed

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U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

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> Firebaugh Canal Water District
>
> Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

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Iq from my iPhone

David Bernhardt (b) (6) @ios.doi.gov>

From:	David Bernhard (b) (6) @ios.doi.gov>
Sent:	Tue May 08 2018 08:08:23 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject:	Re: Pressing Question

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(b) (5)

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Subject:	Re: Pressing Question

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Do you know which water district managers want to talk with you? Will they be acting as board members of the Authority or as representatives of their respective districts?

When do you expect the meeting to take place?

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Do you know which water district managers want to talk with you? I know John Rubin the interim manager of San Louis would be the authority's representative in any discussion.

Will they be acting as board members of the Authority or as representatives of their respective districts? No. The only representative of the authority would be Jon Rubin who is an employee of the authority. He is NOT a board member or a member of any of the 29 districts that make up the

When do you expect the meeting to take place? They want to schedule 5-10 minutes tomorrow or Thursday.

Is it OK if I contact SOL Division of Water Resources on the below questions? I THINK YOU CAN ASK ABOUT ONE AND THREE. I KNEW THE ANSWER TO TWO. WHICH IS BELOW.

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2. Is the San Luis & Delta-Mendota Water Authority a separate public entity from its members (See Section 6507 of the California Government Code)? I KNOW THIS IS ABSOULUTELY THE CASE.

I saw there was a 9th Cir case in which both the Authority and the Westlands Water District sued DOI as separate plaintiffs - 9th Cir. (Cal) Mar 2, 2012. THATS TRUE BUT WESTLANDS AND THE AUTHORITY HAD SEPERATE COUNSEL

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Subject:	Re: Pressing Question

David,

As you know, the pledge doesn't apply to Westlands, so we only have the impartiality reguiation - 5 CFR 2635.502. As implemented in your ethics agreement, this means you may not participate in any party matter in which Westlands is or represents a party, absent prior authorization by your ethics official. For that reason, it's important to know under what authority the release would take place. If it's pursuant to the agreement between Oakdale, South San Joaquin, San Luis, and DWR, and if they are the only parties to that agreement (which, per its name, would seem to be the case), and since San Luis and Westlands are different public entities, then, technically, you wouldn't be participating in a party matter in which Westlands is a party. Of course, you'd have to be careful that they don't otherwise bring up any party matters in which Westlands is or represents a party. If, on the other hand, the release would be pursuant to an agreement or some other party matter in which Westlands is a party, you couldn't participate without prior authorization.

Even if Westlands isn't a party and doesn't represent a party to the matter, there is also the catch-all provision of 502 that says you shouldn't participate in any particular matter (of general applicability or involving specific parties) if a reasonable person would question your impartiality, absent prior authorization from your ethics official. We can grant such an authorization if the Government's interest in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Both the reasonable person and authorization calls depend on the specific facts. (b) (5) [redacted]

I will try to get copies of both agreements from SOL.

Thanks,
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Ed: A group of water district managers want to discuss Reclamation's handling of Oakdale Irrigation District's and South San Joaquin Irrigation District's release of supplemental water under to the State of California's Department of Water Resources and San Luis Delta Mendota Water Authority for a few minutes while I'm in California.

In evaluating the situation, here are the facts. I have not represented these specific parties, and my former firm does not represent them in this particular matter involving specific parties - or in any other matter to my knowledge.

However, one of my former clients Westlands Water District is one of the 29 public water agencies that are Members of San Luis Mendota Water Authority. To facilitate your review, here is a background on the authority. The San Luis & Delta-Mendota Water Authority was established in January of 1992 and consists of water agencies representing approximately 29 federal and exchange water service contractors within the western San Joaquin Valley, San Benito and Santa Clara counties.

Here are the member Districts. It's a diverse group.

Member Agencies

Banta-Carbona Irrigation District

Broadview Water District

Byron Bethany Irrigation District (CVPSA)

Central California Irrigation District

City of Tracy

Columbia Canal Company (a Friend)

Del Puerto Water District

Eagle Field Water District

Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water District

Santa Clara Valley Water District

Tranquillity Irrigation District

Turner Island Water District

West Side Irrigation District

West Stanislaus Irrigation District

Westlands Water District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

David Bernhardt <(b) (6) ios.doi.gov>

From:	David Bernhard (b) (6) @ios.doi.gov>
Sent:	Tue May 08 2018 13:33:52 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject:	Re: Pressing Question

To be honest, I have no idea whether this proposal benefits Westlands at all. However, I think that we might simply call Jon Rubin and ask what the authorities' role is and asking him if Westlands benefits, but I am reluctant to do that without some sort of ok from you.

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David,

As you know, the pledge doesn't apply to Westlands, so we only have the impartiality reguiation - 5 CFR 2635.502. As implemented in your ethics agreement, this means you may not participate in any party matter in which Westlands is or represents a party, absent prior authorization by your ethics official. For that reason, it's important to know under what authority the release would take place. If it's pursuant to the agreement between Oakdale, South San Joaquin, San Luis, and DWR, and if they are the only parties to that agreement (which, per its name, would seem to be the case), and since San Luis and Westlands are different public entities, then, technically, you wouldn't be participating in a party matter in which Westlands is a party. Of course, you'd have to be careful that they don't otherwise bring up any party matters in which Westlands is or represents a party. If, on the other hand, the release would be pursuant to an agreement or some other party matter in which Westlands is a party, you couldn't participate without prior authorization.

Even if Westlands isn't a party and doesn't represent a party to the matter, there is also the catch-all provision of 502 that says you shouldn't participate in any particular matter (of general applicability or involving specific parties) if a

reasonable person would question your impartiality, absent prior authorization from your ethics official. We can grant such an authorization if the Government's interest in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Both the reasonable person and authorization calls depend on the specific facts. (b) (5) [redacted]

I will try to get copies of both agreements from SOL.

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Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

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>
> In evaluating the situation, here are the facts. I have not represented these specific parties, and my former firm does not represent them in this particular matter involving specific parties - or in any other matter to my knowledge.
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> However, one of my former clients Westlands Water District is one of the 29 public water agencies that are Members of San Luis Mendota Water Authority. To facilitate your review, here is a background on the authority. The San Luis & Delta-Mendota Water Authority was established in January of 1992 and consists of water agencies representing approximately 29 federal and exchange water service contractors within the western San Joaquin Valley, San Benito and Santa Clara counties.
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Central California Irrigation District

City of Tracy

Columbia Canal Company (a Friend)

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Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water District

Santa Clara Valley Water District

Tranquillity Irrigation District

Turner Island Water District

West Side Irrigation District

West Stanislaus Irrigation District

Westlands Water District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

David Bernhardt (b) (6) ios.doi.gov>

From:	David Bernhard (b) (6) @ios.doi.gov>
Sent:	Tue May 08 2018 13:47:58 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject:	Re: Pressing Question

209-826-9696 is the authority's office number.

Sent from my iPhone

On May 8, 2018, at 12:40 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> I could contact John. Would you happen to have contact info for him?

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> Sent from my iPhone
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David,

As you know, the pledge doesn't apply to Westlands, so we only have the impartiality reguiation - 5 CFR 2635.502. As implemented in your ethics agreement, this means you may not participate in any party matter in which Westlands is or represents a party, absent prior authorization by your ethics official. For that reason, it's important to know under what authority the release would take place. If it's pursuant to the agreement between Oakdale, South San Joaquin, San Luis, and DWR, and if they are the only parties to that agreement (which, per its name, would seem to be the case), and since San Luis and Westlands are different public entities, then, technically, you wouldn't be participating in a party matter in which Westlands is a party. Of course, you'd have to be careful that they don't otherwise bring up any party matters in which Westlands is or represents a party. If, on the other hand, the release would be pursuant to an agreement or some other party matter in which Westlands is a party, you couldn't participate without prior authorization.

Even if Westlands isn't a party and doesn't represent a party to the matter, there is also the catch-all provision of 502 that says you shouldn't participate in any particular matter (of general applicability or involving specific parties) if a reasonable person would question your impartiality, absent prior authorization from your ethics official. We can grant such an authorization if the Government's interest in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Both the reasonable person and authorization calls depend on the specific facts. (b) (5) [redacted]

I will try to get copies of both agreements from SOL.

Thanks,
Ed

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only know what I provided you. This quote is consistent with their view, so it could be the same item.

Do you know which water district managers want to talk with you? I know John Rubin the interim manager of San Louis would be the authority's representative in any discussion.

Will they be acting as board members of the Authority or as representatives of their respective districts? No. The only representative of the authority would be Jon Rubin who is an employee of the authority. He is NOT a board member or a member of any of the 29 districts that make up the

When do you expect the meeting to take place? They want to schedule 5-10 minutes tomorrow or Thursday.

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>
> In evaluating the situation, here are the facts. I have not represented these specific parties, and my former firm does not represent them in this particular matter involving specific parties - or in any other matter to my knowledge.
>
> However, one of my former clients Westlands Water District is one of the 29 public water agencies that are Members of San Luis Mendota Water Authority. To facilitate your review, here is a background on the authority. The San Luis & Delta-Mendota Water Authority was established in January of 1992 and consists of water agencies representing approximately 29 federal

and exchange water service contractors within the western San Joaquin Valley, San Benito and Santa Clara counties.

Here are the member Districts. It’s a diverse group.

Member Agencies

Banta-Carbona Irrigation District

Broadview Water District

Byron Bethany Irrigation District (CVPSA)

Central California Irrigation District

City of Tracy

Columbia Canal Company (a Friend)

Del Puerto Water District

Eagle Field Water District

Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water District

Santa Clara Valley Water District

Tranquillity Irrigation District

Turner Island Water District

West Side Irrigation District

West Stanislaus Irrigation District

Westlands Water District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

David Bernhardt (b) (6) **@ios.doi.gov>**

From: David Bernhardt (b) (6) t@ios.doi.gov>
Sent: Tue May 08 2018 13:56:21 GMT-0600 (MDT)
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject: Re: Pressing Question

Roger

Sent from my iPhone

On May 8, 2018, at 12:51 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Thanks, David. I'll try to contact him. We have the exercise hot wash in a few minutes so I'll be calling at 5:00 our time.

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On Tue, May 8, 2018 at 3:47 PM, David Bernhard (b) (6) ios.doi.gov> wrote:

> 209-826-9696 is the authority's office number.
>
> Sent from my iPhone
>
> On May 8, 2018, at 12:40 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:
>
> > I could contact John. Would you happen to have contact info for him?
> >
> > *- Stewardship for America with Integrity and Excellence -*
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On Tue, May 8, 2018 at 3:33 PM, David Bernhardt (b) (6) @ios.doi.gov> wrote:

To be honest, I have no idea whether this proposal benefits Westlands at all. However, I think that we might simply call Jon Rubin and ask what the authorities' role is and asking him if Westlands benefits, but I am reluctant to do that without some sort of ok from you.

Sent from my iPhone

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Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water District

Santa Clara Valley Water District

Tranquillity Irrigation District

Turner Island Water District

West Side Irrigation District

West Stanislaus Irrigation District

Westlands Water District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

Edward McDonnell <edward.mcdonnell@sol.doi.gov>

From: Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Sent: Tue May 08 2018 15:31:24 GMT-0600 (MDT)
To: David Bernhard (b) (6) t@ios.doi.gov>
Subject: Re: Pressing Question

Hi David,

I just talked with Jon Rubin and he put me in touch with Tim Olaughlan.

Do you have a moment to talk on the phone right now?

Thanks,
Ed

Sent from my iPhone

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U.S. Department of the Interior

Departmental Ethics Office

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Cel (b) (6) [redacted]

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the specific facts. (b) (5) [redacted]

[redacted]

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>
> Do you know which water district managers want to talk with you? I know John Rubin the interim manager of San Louis would be the authority's representative in any discussion.
>
> Will they be acting as board members of the Authority or as representatives of their respective districts? No. The only representative of the authority would be Jon Rubin who is an employee of the authority. He is NOT a board member or a member of any of the 29 districts that make up the
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> When do you expect the meeting to take place? They want to schedule 5-10 minutes tomorrow or Thursday.

Is it OK if I contact SOL Division of Water Resources on the below questions? I THINK YOU CAN ASK ABOUT ONE AND THREE. I KNEW THE ANSWER TO TWO. WHICH IS BELOW.

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Sent from my iPad

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On Tue, May 8, 2018 at 10:08 AM, David Bernhardt (b) (6) [redacted]t@ios.doi.gov> wrote:

> Ed: Thank you. I really appreciate it. I believe this would be primarily a meeting to listen to these executives views, which I suspect involves saying that the processes of decision making is going to slowly.
>
> (b) (5) [redacted]

(b) (5)



Sent from my iPad

On May 8, 2018, at 9:48 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> I've got this and I'm reviewing it.
>
> Thanks,
> Ed

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On Tue, May 8, 2018 at 8:09 AM, David Bernhardt (b) (6) [redacted]@ios.doi.gov> wrote:

> Ed: A group of water district managers want to discuss Reclamation's handling of Oakdale Irrigation District's and South San Joaquin Irrigation District's release of supplemental water under to the State of California's Department of Water Resources and San Luis Delta Mendota Water Authority for a few minutes while I'm in California.
>
> In evaluating the situation, here are the facts. I have not

represented these specific parties, and my former firm does not represent them in this particular matter involving specific parties - or in any other matter to my knowledge.

However, one of my former clients Westlands Water District is one of the 29 public water agencies that are Members of San Luis Mendota Water Authority. To facilitate your review, here is a background on the authority. The San Luis & Delta-Mendota Water Authority was established in January of 1992 and consists of water agencies representing approximately 29 federal and exchange water service contractors within the western San Joaquin Valley, San Benito and Santa Clara counties.

Here are the member Districts. It's a diverse group.

Member Agencies

Banta-Carbona Irrigation District

Broadview Water District

Byron Bethany Irrigation District (CVPSA)

Central California Irrigation District

City of Tracy

Columbia Canal Company (a Friend)

Del Puerto Water District

Eagle Field Water District

Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water District

Santa Clara Valley Water District

Tranquillity Irrigation District

Turner Island Water District

West Side Irrigation District

West Stanislaus Irrigation District

Westlands Water District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

David Bernhardt (b) (6) @ios.doi.gov>

From:	David Bernhardt (b) (6) ios.doi.gov>
Sent:	Tue May 08 2018 15:44:31 GMT-0600 (MDT)
To:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Re: Pressing Question

Yes ca (b) (6)

Sent from my iPhone

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> Hi David,
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Ed McDonnell

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U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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Room 5313
Office: (202) 208-5916
Cell: (b) (6) [redacted]

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Department of the Interior
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>
> (b) (5) [redacted]

(b) (5)



Sent from my iPad

On May 8, 2018, at 9:48 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> I've got this and I'm reviewing it.
>
> Thanks,
> Ed

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> Ed: A group of water district managers want to discuss Reclamation's handling of Oakdale Irrigation District's and South San Joaquin Irrigation District's release of supplemental water under to the State of California's Department of Water Resources and San Luis Delta Mendota Water Authority for a few minutes while I'm in California.
>
> In evaluating the situation, here are the facts. I have not represented these specific parties, and my former firm does not represent them in this particular matter involving specific parties - or in any other matter to my knowledge.
>
> However, one of my former clients Westlands Water District is one of the 29 public water agencies that are

Members of San Luis Mendota Water Authority. To facilitate your review, here is a background on the authority. The San Luis & Delta-Mendota Water Authority was established in January of 1992 and consists of water agencies representing approximately 29 federal and exchange water service contractors within the western San Joaquin Valley, San Benito and Santa Clara counties.

Here are the member Districts. It's a diverse group.

Member Agencies

Banta-Carbona Irrigation District

Broadview Water District

Byron Bethany Irrigation District (CVPSA)

Central California Irrigation District

City of Tracy

Columbia Canal Company (a Friend)

Del Puerto Water District

Eagle Field Water District

Firebaugh Canal Water District

Fresno Slough Water District

Grassland Water District

Henry Miller Reclamation District #2131

James Irrigation District

Laguna Water District

Mercy Springs Water District

Oro Loma Water District

Pacheco Water District

Panoche Water District

Patterson Irrigation District

Pleasant Valley Water District

Reclamation District 1606

San Benito County Water District

San Luis Water

District

Santa Clara Valley
Water District

Tranquillity
Irrigation District

Turner Island
Water District

West Side
Irrigation District

West Stanislaus
Irrigation District

Westlands Water
District

Therefore, I am seeking guidance of whether consistent with my ethics agreement, I meet with these four water managers to discuss, this potential transfer, given that even though the entities that comprise the parties is not a former client, but one of the parties, who is a local water agency has 29 other public agencies as members, and a member, is a former client.

Iq from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Tue May 08 2018 15:46:19 GMT-0600 (MDT)
To:	David Bernhard (b) (6) @ios.doi.gov>
Subject:	Re: Pressing Question

Hi David,

In speaking with Tim, I learned the following:

He will be the only person meeting with you. He is one of the attorneys for Oakdale Water District and Sou

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On Tue, May 8, 2018 at 5:31 PM, Edward McDonnell <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> I just talked with Jon Rubin and he put me in touch with Tim Olaughlan.
>
> Do you have a moment to talk on the phone right now?
>
> Thanks,
> Ed
>
> Sent from my iPhone
>
> *- Stewardship for America with Integrity and Excellence -*
>
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On May 8, 2018, at 3:47 PM, David Bernhard (b) (6) @ios.doi.gov> wrote:

> 209-826-9696 is the authority's office number.
>
> Sent from my iPhone
>
> On May 8, 2018, at 12:40 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:
>
> > I could contact John. Would you happen to have contact info for him?
> >
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> >
> > *--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---*
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On Tue, May 8, 2018 at 3:33 PM, David Bernhardt (b) (6) [redacted]@ios.doi.gov> wrote:

To be honest, I have no idea whether this proposal benefits Westlands at all. However, I think that we might simply call Jon Rubin and ask what the authorities' role is and asking him if Westlands benefits, but I am reluctant to do that without some sort of ok from you.

Sent from my iPhone

On May 8, 2018, at 12:05 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

David,

As you know, the pledge doesn't apply to Westlands, so we only have the impartiality reguiation - 5 CFR 2635.502. As implemented in your ethics agreement, this means you may not participate in any party matter in which Westlands is or represents a party, absent prior authorization by your ethics official. For that reason, it's important to know under what authority the release would take place. If it's pursuant to the agreement between Oakdale, South San Joaquin, San Luis, and DWR, and if they are the only parties to that agreement (which, per its name, would seem to be the case), and since San Luis and Westlands are different public entities, then, technically, you wouldn't be participating in a party matter in which Westlands is a party. Of course, you'd have to be careful that they don't otherwise bring up any party matters in which Westlands is or represents a party. If, on the other hand, the release would be pursuant to an agreement or

some other party matter in which Westlands is a party, you couldn't participate without prior authorization.

Even if Westlands isn't a party and doesn't represent a party to the matter, there is also the catch-all provision of 502 that says you shouldn't participate in any particular matter (of general applicability or involving specific parties) if a reasonable person would question your impartiality, absent prior authorization from your ethics official. We can grant such an authorization if the Government's interest in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Both the reasonable person and authorization calls depend on the specific facts.

(b) (5) [redacted]

I will try to get copies of both agreements from SOL.

Thanks,
Ed

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On Tue, May 8, 2018 at 1:26 PM, David Bernhardt (b) (6) [redacted]@ios.doi.gov> wrote:

> Do you know if this release is pursuant to the "Agreement for Release of Water by and among the Oakland Irrigation District, the South San Joaquin Irrigation District, the San Luis & Delta-Mendota Water Authority, and the California Department of Water Resources"? I only know what I provided you. This quote is consistent with their view, so it could be the same item.
>
> Do you know which water district managers want to talk with you? I know John Rubin the interim manager of San Louis would be

the authority's representative in any discussion.

Will they be acting as board members of the Authority or as representatives of their respective districts? No. The only representative of the authority would be Jon Rubin who is an employee of the authority. He is NOT a board member or a member of any of the 29 districts that make up the

When do you expect the meeting to take place? They want to schedule 5-10 minutes tomorrow or Thursday.

Is it OK if I contact SOL Division of Water Resources on the below questions? I THINK YOU CAN ASK ABOUT ONE AND THREE. I KNEW THE ANSWER TO TWO. WHICH IS BELOW.

1. Do you know where I can get a copy of the 1992 agreement (and any amendments) that created the San Luis & Delta-Mendota Water Authority? I tried to locate a copy on the California Secretary of State's website but was unable to.

2. Is the San Luis & Delta-Mendota Water Authority a separate public entity from its members (See Section 6507 of the California Government Code)? I KNOW THIS IS ABSOULUTELY THE CASE.

I saw there was a 9th Cir case in which both the Authority and the Westlands Water District sued DOI as separate plaintiffs - 9th Cir. (Cal) Mar 2, 2012. THATS TRUE BUT WESTLANDS AND THE AUTHORITY HAD SEPERATE COUNSEL

3. Do you know where I can get a copy of the Agreement for Release of Water by and among the Oakland Irrigation District, the South San Joaquin Irrigation District, the San Luis & Delta-Mendota Water Authority, and the California Department of Water Resources? Are the four named parties the only signatories to the agreement?

Sent from my iPad

On May 8, 2018, at 10:12 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

Hi David,

Do you know if this release is pursuant to the "Agreement for Release of Water by and among the Oakland Irrigation District, the South San Joaquin Irrigation District, the San Luis & Delta-Mendota Water Authority, and the California Department of Water Resources"?

Do you know which water district managers want to talk with you? Will they be acting as board members of the Authority or as representatives of their respective districts?

When do you expect the meeting to take place?

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The State Bar of California is an approved MCLE Provider. Topics, speakers and schedules are subject to change.

Conference Green Initiatives

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Conference Program Materials and Merchandise

Conference registrants will receive a USB storage device with an electronic version of all program materials. Before the Conference, attendees will receive a link with information on how to review and download the program materials from the Internet. It may be helpful to review a program's reference material before the class, so please take a moment to check the materials for classes you plan to attend. This website is not available to the public, and access is given only to Conference registrants. Late-breaking supplemental materials not available before the Conference will be added to this site at a later date. We are pleased to announce that wireless Internet service will be available in all education program rooms, compliments of the **Law Office of Jennifer F. Novak**.

The annual Conference t-shirt will be available for pre-purchase on the registration form. Conference products are available while supplies last.

Scholarships

The Environmental Law Section of the State Bar of California is pleased to offer five (5) Michael H. Remy Scholarships which include tuition, transportation, room and board courtesy of **Remy Moose Manley LLP**, and at least 25 tuition scholarships. Scholarship awardees will be notified after August 21, 2017.

PROGRAM SCHEDULE

THURSDAY

Thursday, October 19 | 4:00 pm-7:00 pm

Registration Hours

Thursday, October 19 | 4:00 pm-6:00 pm

Environmental Law Section Executive Committee Meeting

Thursday, October 19 | 6:00 pm-7:30 pm

Opening Night Reception (RSVP Requested)

Welcome to the 26th Annual Environmental Law Conference at Yosemite® reception and wine sponsored by **Bick Law LLP, Burke Williams & Sorenson, Greenberg Glusker LLP,** and **LangeTwins Family Winery and Vineyards**. To RSVP, **select Ticketed Event #28** on the Conference registration form.

2017 CONFERENCE PROGRAM SCHEDULE

FRIDAY

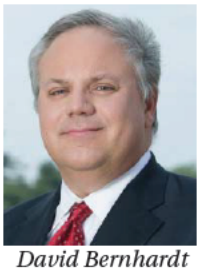
Friday, October 20 | 7:15 am-12:30 pm
Registration Hours

Friday, October 20 | 7:30 am-8:00 am
Continental Breakfast (RSVP Requested)

RSVP for this complimentary breakfast on the registration form. **Select Ticketed Event #29**. Breakfast sponsored by **Gibson Dunn**. Mid-morning refreshment break sponsored by **Downey Brand**.

Friday, October 20 | 8:00 am-9:00 am
.75 Hour MCLE
Session 1a: Friday General Session

Welcome by **Osha Meserve**, 2016-2017 Chair, Environmental Law Section, Soluri Meserve. Introduction by **Ryan Waterman**, Yosemite Co-Chair, Brownstein Hyatt Farber Schreck. Keynote presentation by **David Bernhardt**, Deputy Secretary of the U.S. Department of the Interior.


David Bernhardt

David Bernhardt is the Deputy Secretary of the U.S. Department of the Interior. He is a former shareholder at Brownstein Hyatt Farber Schreck, where he chaired the Natural Resources Department. During his previous tenure at Interior, Mr. Bernhardt served as the Solicitor of the Interior Department, the third-highest ranking position at Interior and as Deputy Solicitor, Deputy Chief of Staff, Counselor to the Secretary of the Interior, and Director of the Office of Congressional and Legislative Affairs. Mr. Bernhardt also previously led the International Boundary Commission between the U.S. and Canada. Mr. Bernhardt received his BA from the University of Northern Colorado, and law degree with honors from the George Washington University Law School.

Friday, October 20 | 9:00 am-9:30 am
Session 1b: Friday General Session

Friday's keynote presentation will be immediately followed by an important update on the future of the Environmental Law Section, led by **Osha Meserve**, 2016-2017 Chair, Environmental Law Section, Soluri Meserve; **Eric Adair**, 2017-2018 Chair, Environmental Law Section, Hinson Gravelle & Adair; and **Howard ("Chip") Wilkins III**, 2015-2016 Chair Environmental Law Section and Environmental Law Section Council of Sections Representative, Remy Moose Manley LLP.

Friday, October 20 | 9:45 am-11:15 am
1.5 Hours MCLE
Session 2: Looking for "Buried Treasures" and Then Doing the Deal: The Latest Challenges and Tips in Developing, Selling, Buying and Leasing Contaminated Sites

Our panel of experts will discuss the latest developments and hot topics regarding site assessment and remediation, with or without agency oversite, in the context of the prospective development, sale or leasing of contaminated properties. The panel will cover the latest Brownsfield policies, how to best navigate soil vapor intrusion issues, the do's and don'ts of seeking and obtaining closure/no further action letters from government oversite agencies, and strategies to best protect against or minimize your environmental liabilities when transacting a deal involving impacted properties. Our panel will also address the Trump Administration's impacts on these issues.

Moderator:
Gary A. Meyer, Parker Milliken, Los Angeles

Panelists:
Marie Rongone, U.S. EPA Region IX Office of General Counsel, San Francisco
Suzi Rosen, Partner, Engineering and Science, Inc., Torrance
Matt Winefield, Winefield & Associates, Real Estate Ventures, Long Beach

Friday, October 20 | 9:45 am-11:15 am
1.5 Hours MCLE
Session 3: The Dynamic Policy, Politics, and Law of Desalination

With new technology, regulations, and changing coastlines, the setting for desalination on the California coast is very dynamic. According to the industry, desalination technology has improved drastically in recent years. Meanwhile, the State Water Resources Control Board has passed the "Desal Amendments" as part of the Ocean Plan, creating a new framework to evaluate desalination plants as a potential part of the state's water supply. But given potential impacts of ocean intake and briny dispersal, as well as other potential effects on ocean ecology and coastal values, the plants concern environmental groups, which are taking an active part in the permitting process. This panel will discuss the current legal and political battles over desal, and what they may mean for the future of the practice in California.

Moderator:
Jonathan Zasloff, UCLA School of Law, Los Angeles

Panelists:
Alvar Escriva-Bou, Public Policy Institute of California, San Francisco
Susan Jordan, California Coastal Protection Network, Santa Barbara
Tom Luster, California Coastal Commission, San Francisco
Richard Svindland, CalAm Water, Monterey



Friday, October 20 | 9:45 am-11:15 am
1.5 Hours MCLE

Session 4: CEQA and the Tangled Web of Environmental Laws

CEQA is California's premiere environmental law, mandating disclosure and public consideration of the possible adverse environmental consequences of any discretionary action that will result in a physical change in our environment. Concurrently, proposed projects are often subject to a myriad of other laws, including the Coastal Act, Sustainable Groundwater Management Act, State Planning and Zoning, and the common law public trust doctrine. This panel will explore the challenges and sometimes conflicting or overlapping legal requirements that come to the fore during the environmental review process.

Moderator:
Gideon Kracov, Law Office of Gideon Kracov, Los Angeles

Panelists:
Sydney Coatsworth, Ascent Environmental, Inc., Sacramento
Whit Manley, Remy Moose Manley LLP, Sacramento
Beverly Grossman Palmer, Strumwasser & Woocher, Los Angeles

Friday, October 20 | 9:45 am-11:15 am
1.5 Hours MCLE

Session 5: New California Legislation: The Latest from Sacramento

The California Legislature is known for passing groundbreaking environmental policies, which are often adopted nationally and internationally. Amid the backdrop of a new, business-friendly EPA Administrator, the California Legislature served up, and Governor Brown signed, a number of new laws to preserve the state's leadership role in the environmental field. Join our panel of seasoned legislative staffers for a timely discussion of newly enacted legislation, with a special focus on legislative accomplishments and trends for the future.

Moderator:
Gary Lucks, Beyond Compliance, Oakland

Panelists:
Catherine Freeman, Chief Consultant to the Assembly Committee on Water, Parks, and Wildlife, Sacramento
Kip Lipper, Office of the Senate Pro Tempore, Sacramento
Marie Liu, Special Assistant to Assembly Speaker Anthony Rendon, Sacramento

Friday, October 20 | 11:30 am-1:00 pm
1.5 Hours MCLE

Session 6: Federal Chemical Reform as Seen Through the California Lens

In June 2016, the Federal "Frank R. Lautenberg Chemical Safety for the 21st Century Act" was signed into law by President Obama. Known more popularly as the "new Toxic Substances Control Act", it constitutes an historic and comprehensive overhaul of the original law of that name, likely with far-reaching impacts. Our panel of experts will discuss the significant changes to the federal TSCA regime, key substantive rulemakings and procedural mandates, and important milestones. Specific attention will be given to how this new regime may – and may not – affect toxics regulation in California, including under California's Proposition 65 and Green Chemistry Initiative, as well as how changes in federal administrative priorities and edicts may affect its implementation and enforcement.

Moderator:
Claudia Polsky, UC Berkeley School of Law, Berkeley

Panelists:
Andy Igregias, Safer Chemicals, Healthy Families, Washington D.C.
Dr. Jeff Morris, U.S. Environmental Protection Agency, Washington, D.C.
Peggy Otum, Arnold & Porter, San Francisco
Dr. Meredith Williams, California Department of Toxic Substances Control, Sacramento

Friday, October 20 | 11:30 am-1:00 pm
1.5 Hours MCLE

Session 7: Cooperative Federalism and Water Resources under the Trump Administration

Recently enacted federal legislation affecting Central Valley Project operations (Subtitle J of Title I of the WIIN Act) modifies federal environmental requirements, while leaving state law, and federal law requirements for compliance with state law, in place. Will the state increase its activity to fill in the gap in federal regulation? Or will Congress depart from its historical deference to state water law and override state law, as proposed in H.R. 23 and other legislation?

Moderator:
Paul Kibel, Golden Gate University School of Law, San Francisco

Panelists:
David Bernhardt, U.S. Department of the Interior, Washington, D.C.
Clifford Lee, California Department of Justice, San Francisco
Rachel Zwillinger, Defenders of Wildlife, Sacramento

Friday, October 20 | 11:30 am-1:00 pm
1.5 Hours MCLE

Session 8: Results from the Laboratory of Democracy: Which California Climate Policies are Working Best? Which are Not?

California's legislature has set an ambitious 2030 climate emissions target, posing serious questions for policymakers about which tools to use to meet that target. In addition, subnational jurisdictions across the country and the world continue to look to California for model climate policies. What has California's experience shown about the benefits and drawbacks of various climate regulatory tools? Which regulatory tools have worked best, and which have underperformed? And, given these lessons, what's coming down the pike for regulated industry in California on the path to 2030? Are climate taxes or other new tools a likely part of our future?

Moderator:
Suma Peesapati, Law Offices of Suma Peesapati, San Diego

Panelists:
Alex Jackson, Natural Resources Defense Council, San Francisco
Amy Vanderwarker, California Environmental Justice Alliance, Oakland
Michael Wara, Stanford School of Law, Stanford

Friday, October 20 | 11:30 am-1:00 pm
1.5 Hours MCLE of which 1 Hour is Legal Ethics

Session 9: Cannabis from Medicinal to Recreational: What It Means for You and Your Practice

Proposition 64 changes the landscape for marijuana use in California. Drawing lessons from states that have experienced this transformation, this panel will address changes in enforcement and regulation in California, with a focus on what these changes mean for business and municipal clients and for your practice. The panel will cover proposed new California state regulations; the interaction of state and federal enforcement priorities; and the impact of marijuana legalization on California's large businesses, cities, and counties as well as ethical issues unique to representation of cannabis industry clients.

Moderator:
Rebecca Akroyd, Kronick, Moskovitz, Tiedemann & Girard, Sacramento

Panelists:
Crystal D'Souza, California Department of Food and Agriculture, Sacramento
Pamela Epstein, Green Wise Consulting, Los Angeles
Victor Ponto, Best Best & Krieger LLP, Ontario

Friday, October 20 | 1:30 pm (times vary)

Friday Afternoon Activities led by Environmental Law Section Members

Register on-site ONLY. Space is limited.

Conference attendees and their guests may choose to participate in offsite activities. Sign-up sheets for planned activities will be located at the Executive Committee table.

SATURDAY

Saturday, October 21 | 7:15 am-12:15 pm

Registration Hours

Saturday, October 21 | 7:30 am-8:00 am

Continental Breakfast (RSVP Requested)

RSVP for this complimentary breakfast on the registration form. **Select Ticketed Event #30.** Breakfast sponsored by **Cox, Castle & Nicholson LLP.** Mid-morning refreshment break sponsored by **Shute, Mihaly & Weinberger**.

Saturday, October 21 | 8:00 am-9:00 am
.75 Hours MCLE

Session 10: Saturday General Session

Introduction by **Alisha Winterswyk,** Yosemite Conference Co-Chair, Best Best & Krieger LLP. Keynote presentation by **Martha Guzman Aceves**, Commissioner of the California Public Utilities Commission.


Martha Guzman Aceves

Martha Guzman Aceves was appointed Commissioner at the CPUC by Governor Edmund G. Brown, Jr. on Dec. 28, 2016. She previously served as deputy legislative affairs secretary in the Office of the Governor since 2011, focusing on natural resources, environmental protection, energy and food and agriculture. She was the sustainable communities program director for the California Rural Legal Assistance Foundation from 2005 to 2011. She was legislative coordinator for United Farm Workers from 1999 to 2005, working on labor and environmental issues. She is the co-founder of Communities for a New California, a charitable organization promoting increased civic engagement of underrepresented communities. She received her Master of Science degree in agricultural and resource economics from the University of California, Davis.



Saturday, October 21 | 9:15 am-10:45 am 1.5 Hours MCLE

Session 11: Getting to 50% Renewables and Beyond: How California Plans to Achieve its 2030 Goals

SB 350 (De Leon, 2015) requires California to procure half of its electricity from renewable sources by 2030, with additional legislative efforts for even more aggressive targets in the coming decades. But while the price of renewables has been decreasing, the effort will require major deployment of new facilities and associated grid infrastructure, which will have significant land use implications throughout the state. In addition, decisions related to regionalizing California's grid with other western states could affect costs and deployment as well as the ability to integrate intermittent energy in a way that does not increase overall emissions. This panel will discuss these issues and more as California's aggressive renewable goals are put into action.

Moderator:
Ethan Elkind, UC Berkeley School of Law, Berkeley

Panelists:
Alice Reynolds, Office of Governor Edmund G. Brown, Jr., Sacramento
Mark Rothleder, California Independent Systems Operator, Folsom
Geof Syphers, Sonoma Clean Power, Santa Rosa

Saturday, October 21 | 9:15 am-10:45 am 1.5 Hours MCLE of which 1 Hour is Elimination of Bias (Limited to 60 People)

Session 12: Diversity Roundtable: Developing Diverse Leadership in Environmental Law and Policy

Environmental workplaces are increasingly devoting institutional resources to foster diversity and inclusion. This round table will explore how non-profit organizations, governmental entities, law firms, and other institutions in the environmental law and policy sector support individuals from diverse backgrounds rising to leadership positions. Motivations, strategies, and opportunities for creating a pipeline of diverse leaders in environmental law and policy will also be shared.

Moderator:
Chelsea Tu, Public Advocates, Sacramento

Panelists:
Stacey Geis, Earthjustice, San Francisco
Guillermo Mayer, Public Advocates, San Francisco
Letitia Moore, U.S. EPA Region IX, San Francisco
Danielle Sakai, Best Best & Krieger LLP, Riverside

Saturday, October 2 | 9:15 am-10:45 am 1.5 Hours MCLE

Session 13: Recent Environmental Law Developments in the U.S. Supreme Court and Ninth Circuit Court of Appeals

The U.S. Supreme Court and U.S. Circuit Courts of Appeals have been active over the past year, deciding numerous major environmental law cases. Other key environmental litigation—including judicial challenges to the Obama Administration's Clean Power Plan and "Waters of the United States" regulatory initiatives—is currently pending. Join a panel of environmental law experts who follow these judicial developments closely for a survey of the most important decided and pending environmental law cases from these courts. The panelists will also discuss general environmental law trends and developments in these tribunals.

Moderator:
Richard Frank, UC Davis School of Law, Davis

Panelists:
Holly Doremus, UC Berkeley School of Law, Berkeley
Janill Richards, California Attorney General Office of the Solicitor General, Oakland

Saturday, October 21 | 9:15 am-10:45 am 1.5 Hours MCLE

Session 14: Public Lands: Past Achievements, Current Threats, and Future Opportunities

Even before the change in administrations in Washington, D.C., the role of the federal government in the management of public lands was a focus of national attention with the takeover of the Malheur Wildlife Refuge and President Obama's invocation of the Antiquities Act to protect lands taking center stage. The 2016 winner of the Lifetime Achievement Award, Johanna Wald, will participate in a discussion of key issues in public lands protection, including the Antiquities Act, the rebirth of the Wise Use movement, and efforts by the Trump administration to divest public lands.

Moderator:
Ellison Folk, Shute Mihaly & Weinberger, San Francisco

Panelists:
Letty Belin, Former Senior Counsel to the Deputy Secretary, U.S. Department of the Interior, Washington, D.C.
Mark Maryboy, Former Navajo Nation Delegate and Former San Juan County (UT) Commissioner, Blanding, UT
Johanna Wald, Former Senior Attorney, Natural Resources Defense Council, San Francisco



Saturday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 15: A View from the Bench: Marking the California Supreme Court's Jurisprudence in Environmental Law

The California Supreme Court, perhaps the most influential state supreme court in the nation, decided over a dozen significant environmental cases over the past three years and currently has multiple environmental cases pending. Recent court decisions involving CEQA, greenhouse gas reduction, federal preemption, and coastal development permitting have helped to shape the administration of our environmental laws. At the same time, the composition of the Court has changed markedly during Governor Brown's tenure. With the dramatic shift in environmental policies at the federal level, California and the Court will play a significant role in shaping the environmental legal landscape in the coming years. This panel, which includes a Supreme Court Justice and two avid court-watchers, will examine the Court's past decisions and current trends, and offer observations about the direction of the Court and environmental law in California.

Moderator:
Kathleen Kenealy, California Department of Justice, Los Angeles

Panelists:
Sean B. Hecht, UCLA School of Law, Los Angeles

The Honorable Goodwin H. Liu, Supreme Court of California, San Francisco
Fiona Smith, California Environmental Insider, San Francisco

Saturday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 16: Controlling Air Pollution from Mobile Sources in California

The importance of controlling vehicle emissions in California has only grown as stationary source emissions have continued to fall. Levels of traditional criteria pollutants remain stubbornly high in urban areas in the south, while tailpipe emissions are the chief source of greenhouse gases throughout California. In the face of federal regulatory backsliding on a number of air quality rules, this panel looks at the legal and regulatory programs the state is relying on to control transportation emissions today and to meet future goals. Topics to be discussed include infrastructure improvements, goods movement innovations, state mobile-source emission standards (including the zero-emission vehicle program), the Low Carbon Fuel Standard, and traditional measures to reduce criteria air pollutants from vehicles.

Moderator:
William W. Westerfield, III, Sacramento Municipal Utility District, Sacramento

Panelists:
Adrian Martinez, Earthjustice, Los Angeles
Elaine Meckenstock, California Department of Justice, Oakland
Matthew Nelson, Electrify America (subsidiary of Volkswagen Group of America), Reston, Virginia (invited)

Saturday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE Elimination of Bias

Session 17: Respecting California Native Tribes as Sovereign Nations

Certain environmental laws explicitly provide for government-to-government consultation between California's Native Nations and local, state and federal agencies, but what does "consultation" mean? And what role does cultural bias play in the failure to recognize tribal governments as governments? This panel will describe tribal sovereignty, explore the unbreakable link between tribal sovereignty and the government-to-government concept, and describe the respect tribal leaders and tribal governments receive under the law. The discussion will focus on AB 52 and Section 106 of the National Historic Preservation Act, and will also help identify ways to keep cultural bias from creeping into consultations.

Moderator:
Antonette Cordero, Office of the Attorney General, Los Angeles

Panelists:
Donna Beddow, County of San Diego, Lakeside
Cynthia Gomez, Tribal Advisor to Governor Edmund G. Brown, Jr., Elk Grove
Merri Lopez-Keifer, San Luis Rey Band of Mission Indians, Martinez

Saturday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 18: The Fix is In: Would Re-Engineering Save or Undermine the Delta?

Decades of Delta pronouncements have failed to prevent major species declines, water quality impairment, and ongoing battles over Delta water supplies. The proposal to build two massive Delta tunnels, now called "California WaterFix," has generated intense disputes in an intricate web of proceedings, including one of the most complex reviews in the State Water Resources Control Board's history. This panel will comment on key areas of scientific and legal dispute and lessons learned from years spent evaluating this major water infrastructure project. It will consider more broadly whether re-engineering the Delta with new infrastructure as proposed would improve the Delta's sustainability or contribute to the Delta's destruction.

Moderator:
David Owen, UC Hastings School of Law, San Francisco

Panelists:
Michelle Banonis, California Department of Water Resources, Sacramento
Osha Meserve, Soluri Meserve, Sacramento
Jonathan Rosenfield, The Bay Institute, San Francisco



Saturday, October 21 | 1:00 pm-5:00 pm

Saturday Afternoon Outdoor Presentations

Register on-site ONLY. Space is limited.

Some presentations may involve a short hike, and some programs may not be appropriate for children. Registration is on-site only, and all presentations have limited space. Descriptions and signup sheets are available at the Executive Committee table. At press time, the following presentations have been scheduled.

Fire Ecology

Wildfire is a critical part of healthy forested ecosystems in the Sierra Nevada. Over a century of fire exclusion has dramatically altered forest structure, resulting in more severe fires that can kill entire stands of trees at unprecedented scales. Learn how fire and its exclusion are impacting the forests of Yosemite National Park and how the Yosemite Fire Management Program has been working to restore fire to fire-dependent ecosystems for over forty years. The program will discuss the tactics used and challenges faced by the program.

Moderator:
Jennifer F. Novak, Law Office of Jennifer F. Novak, Rolling Hills Estates

Speaker:
Kristen Shive, Fire Ecologist, Yosemite National Park

Welcome Back, Celebrated Jumping Frog—and Turtle Too

The California red-legged frog, a federally listed threatened species, and the western pond turtle, identified as a species of special concern by the California Department of Fish and Wildlife, are being reintroduced in Yosemite Valley. Learn about the identification of suitable sites and other aspects of the cooperative effort to bring these species back after a 50 year absence from Yosemite Valley.

Moderator:
William W. Westerfield, III, Sacramento Municipal Utility District, Sacramento

Speaker:
Rob Grasso, Park Aquatic Ecologist, Yosemite National Park

Merced River Restoration

Yosemite National Park is conducting ecological restoration projects in the Merced River using restoration techniques that have not been done in the park before. In the fall of 2016, a large wood structure was installed in the river that takes advantage of deposition processes to build out riverbanks. High river flows have jump-started the restoration process and the structure has already started to function as intended. The presentation will discuss the science and strategy behind the restoration, as well as anticipated future work.

Moderator:
Andy Sawyer, State Water Resources Control Board, Sacramento

Speaker:
Catherine Fong, Hydrologist, Yosemite National Park

Saturday, October 21 | 5:30 pm-6:15 pm

A Fireside Chat with Byron Sher, Recipient of the 2017 Environmental Law Section Lifetime Achievement Award

Join us in the Fireside Lounge, adjacent to the Hotel lobby, for an informal chat with **Byron Sher**, this year's Lifetime Achievement Award recipient. Hear a firsthand account on his stellar career and contributions to environmental law. Facilitated by: **Kip Lipper**, Office of the Senate Pro Tempore, Sacramento.

Saturday, October 21 | 6:15 pm-7:00 pm

Saturday Evening Reception (RSVP Requested)

Join us as we gather before dinner for cocktails and hors d'oeuvres set out in the lobby. The reception is sponsored by **Gresham Savage Nolan & Tilden, PC, Langan** and **Ramboll Environ** and **Brownstein Hyatt Farber Schreck**. To RSVP, select Ticketed Event #31 on the Conference registration form.

Saturday, October 21 | 7:00 pm-9:00 pm

Saturday Night Dinner Program

Dinner and Wine sponsored by **Langan, Hanson Bridgett LLP, Barg Coffin Lewis & Trapp LLP, SCS Engineers** and **Bogle Vineyards** and **Wilson Vineyards. Ticketed Event. Select Ticketed Event #s 32 to 36** on the conference registration form.

Presentation of the Environmental Law Section Lifetime Achievement Award given to **Byron Sher**

The Environmental Law Section is honored to present its fourth annual *Lifetime Achievement Award* to **Byron Sher**. Introductions by **Ellison Folk**, Shute Mihaly Wineberger LLP, Co-Chair Lifetime Achievement Award Subcommittee of the Environmental Law Section, and **Johanna Wald**. Remarks by **Byron Sher**.



Byron Sher

As a state legislator for nearly a quarter century (1980-2004), much of it concurrent with his career as a Law Professor at Stanford University, Byron was a driving force in shaping California's environmental laws. In both the state assembly and state Senate, Byron held leadership positions on committees with responsibility for environmental and natural resources matters. His enduring influence on the environment is reflected in his authorship of legislation concerning, among other issues, clean air, waste management, wild and scenic rivers, forests and timber harvesting, and responsible mining operations. After retiring from the Legislature, Byron served on the boards of the Sierra Nevada Conservancy and the Tahoe Regional Planning Agency. Throughout his career, Byron maintained a steadfast commitment to using his knowledge and skills as a lawyer to strengthen and improve California's environmental laws and to guide several of our most important governmental land management and conservation organizations to make prudent decisions.

Dinner and Keynote Presentation

Introduction by **Christian Marsh**, Downey Brand LLP. Remarks by **Dr. Thomas E. Lovejoy**, University Professor in the Department of Environmental Science and Policy at George Mason University and Senior Fellow at the United Nations Foundation



Thomas E. Lovejoy

Dr. Thomas Lovejoy is a conservation biologist well known for coining the term "biological diversity." He is a University Professor in the Department of Environmental Science and Policy at George Mason University, and serves as Senior Fellow at the United Nations Foundation, and as a Science Envoy for the U.S. Department of State. He has served as the President and Biodiversity Chair of the Heinz Center for Science, Economics, and the Environment. Before assuming this position, he was the World Bank's Chief Biodiversity Advisor and Lead Specialist for Environment for Latin America and the Caribbean, as well as Senior Advisor to the President of the United Nations Foundation. Spanning the political spectrum, Dr. Lovejoy has served on science and environmental councils under the Reagan, Bush, Clinton, and Obama administrations. He also founded *Nature*, the popular long-term series on public television. Dr. Lovejoy holds B.S. and Ph.D (biology) degrees from Yale University.

Saturday, October 21 | 9:00 pm-11:00 pm

Saturday Night Dessert Party (RSVP Requested)

Delicious delicacies complete the evening. Enjoy dessert, hosted libations and dancing at the 26th Annual Dessert Party sponsored by **Skadden, Arps, Slate, Meagher & Flom LLP**. To RSVP, **select Ticketed Event #37** on the Conference registration form.

SUNDAY

Sunday, October 22 | 7:15 am-12:15 pm

Registration Hours

Sunday, October 22 | 7:30 am-8:00 am

Continental Breakfast (RSVP Requested)

RSVP for this complimentary breakfast on the registration form. **Select Ticketed Event #38.** Mid-morning refreshment break sponsored by **Integral Consulting.**

Sunday, October 22 | 8:00 am-9:00 am .75 Hour MCLE

Session 19: Sunday General Session

Welcome by **Eric Adair,** 2017–2018 Vice-Chair, Environmental Law Section, Hinson Gravelle & Adair LLP. Introduction by **Cara Horowitz**, Yosemite Conference Co-Chair, UCLA School of Law. Keynote presentation by **The Honorable Goodwin H. Liu**, Associate Justice of the Supreme Court of California.



Honorable Goodwin H. Liu

Justice Goodwin Liu is an Associate Justice of the California Supreme Court. He was unanimously confirmed on August 31, 2011, following his appointment by Governor Edmund G. Brown, Jr. Before joining the court, Justice Liu was Professor of Law at the UC Berkeley School of Law (Boalt Hall), where he served as Associate Dean and taught constitutional law and education law and policy. Justice Liu earned a bachelor's degree in biology from Stanford University, attended Oxford University on a Rhodes Scholarship, and graduated from Yale Law School. He clerked for D.C. Circuit Judge David Tatel, and U.S. Supreme Court Justice Ruth Bader Ginsburg.

Sunday, October 22 | 9:15 am-10:45 am 1.5 Hours MCLE

Session 20: Built to Spill, or Built to Last? A Long View of the 2017 Oroville Dam Crisis

After five years of drought, heavy winter rains raised flood risks and renewed questions about California's resilience between extremes of drought and deluge. Oroville Dam is the 49-year old keystone facility of California's State Water Project. The dam's Winter 2017 crisis forced 188,000 people to evacuate when an emergency spillway was used for the first time. The Department of Water Resources asserts it has followed the law in Oroville's lengthy relicensing review and is developing a spillway recovery plan. Counties and environmental groups criticize DWR for underestimating known costs and risks, and failing to prepare for climate change or establish resilience under a complete range of drought and flood conditions. This panel will discuss intersecting law, science and policy issues and practical steps to protect the environment and public safety.

Moderator:
Roger Moore, Rossmann and Moore LLP, Berkeley

Panelists:
Cindy Messer, California Department of Water Resources, Sacramento
Ronald Stork, Friends of the River, Sacramento
Joshua Viers, UC Merced, Merced



Sunday, October 22 | 9:15 am-10:45 am
1.5 Hours MCLE

Session 21: CEQA Update—A Perennial Favorite

Panelists will discuss in detail key CEQA cases from the past year, summarizing the published cases, outlining trends, and providing a brief update on recent legislation.

Moderator:
Christian Marsh, Downey Brand LLP, San Francisco

Panelists:
Caroline Farrell, Center on Race, Poverty & the Environment, Delano
John Fox, City of Los Angeles, Los Angeles
Andrew Sabey, Cox, Castle & Nicholson LLP, San Francisco

Sunday, October 22 | 9:15 am-10:45 am
1.5 Hours MCLE

Session 22: U.S. Climate Change Regulation at a Crossroads: The Big Picture

This year has brought major changes vis-à-vis federal efforts to reduce greenhouse gas regulation and transition our energy sector away from fossil fuels. The Trump Administration has backtracked on many climate initiatives, and questioned the value of national and international efforts to control greenhouse gas emissions. It also is poised to reduce support for research and development of alternative energy. Do opportunities remain for federal progress and, if so, where? What role is the U.S. likely to play over the next few years in international climate talks? What implications will federal climate policy changes have for disadvantaged communities? And what strategies might states, local governments, advocacy groups, and businesses that support climate action use to fill the gap in federal action?

Moderator:
Ann E. Carlson, UCLA School of Law, Los Angeles

Panelists:
Tomás Carbonell, Environmental Defense Fund, Washington, D.C.
Kyle Danish, Van Ness Feldman LLP, Washington, D.C.
Jacqui Patterson, NAACP Environmental and Climate Justice Program, Baltimore, MD

Sunday, October 22 | 9:15 am-10:45 am
1.5 Hours MCLE

Session 23: Contaminated Groundwater as a Resource & Emerging Contaminants

In light of California's lengthy drought, the expectation of future droughts due to climate change, and the provisions of the Sustainable Groundwater Management Act (SGMA), water agencies and municipalities are looking toward expanding local sources of water and implementing more extensive pump-and-treat remedies in impacted groundwater basins such as the San Fernando Valley. But such basins are already the subject of decades-old consent decrees and settlements between and among local, state and federal agencies and PRPs. This panel will examine the requirements of the SGMA, the plans of municipalities and groundwater purveyors to expand use of treated groundwater, and who should pay for those new treatment facilities.

Moderator:
Michael Leslie, Boies Schiller Flexner LLP, Los Angeles

Panelists:
Kim Bick, Bick Law LLC, Newport Beach
Rula Deeb, Geosyntec Consultants, Oakland
Richard Tom (Invited), Los Angeles Department of Water and Power, Los Angeles

Sunday, October 22 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 24: 50th Anniversary of the State Water Resources Control Board

In 1967, the California Legislature combined the state's water right and water quality control programs, creating the State Water Resources Control Board. But the Legislature provided little guidance as to how to integrate the programs. Looking back 50 years later, how has the State Water Resources Control Board met the challenge? What needs to be done? What challenges has it faced in fulfilling its mission, and what challenges lie ahead?

Moderator:
Michael Lauffer, State Water Resources Control Board, Sacramento

Panelists:
Jennifer Harder, McGeorge School of Law, Sacramento
Felicia Marcus, State Water Resources Control Board, Sacramento
The Honorable Ron Robie, California Court of Appeal, Third Appellate District, Sacramento



Sunday, October 22 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 25: The Future of Energy Storage in the Aftermath of the Aliso Canyon Leak

In the aftermath of the historic leak of natural gas from the Aliso Canyon storage facility, the effort to ramp up alternative forms of grid energy storage has been supercharged. These efforts are further supported by the California Public Utilities Commission's requirement that Investor-Owned Utilities integrate different types of energy storage into the grid. This panel would look back at lessons learned from the Aliso Canyon leak; examine today's burgeoning efforts to create alternative grid storage facilities; and discuss what these efforts may mean for the future of California's energy grid. We will place particular emphasis on the future of natural gas and the effect of storage going forward for structuring the energy grid.

Moderator:
Eric Adair, Hinson Gravelle & Adair LLP, Valencia

Panelists:
Janice Lin, California Energy Storage Alliance, Berkeley
Commissioner Liane M. Randolph, California Public Utilities Commission, San Francisco
Sarah Van Cleve, Tesla, San Francisco

Sunday, October 22 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 26: CEQA and Climate Change

The California Supreme Court's decision in *Center for Biological Diversity v. Cal. Dep't of Fish & Wildlife*, the Governor's 2015 Executive Order, and state legislation on climate change have brought new challenges to the analysis of greenhouse gas emissions in CEQA documents. This panel will address how agencies and courts have approached the analysis of GHG emissions in the wake of the *CBD* decision and will also discuss how recent legislative initiatives and the Supreme Court's recent decision in *Cleveland Nat'l Forest Found. v. SANDAG* will affect this approach.

Moderator:
Ellen M. Peter, California Air Resources Board, Sacramento

Panelists:
Kevin P. Bundy, Center for Biological Diversity, Oakland
Jane Luckhardt, Northern California Power Agency, Roseville
Margaret Sohagi, The Sohagi Law Group, Los Angeles

Sunday, October 22 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 27: Receding and Advancing Jurisdictional Boundaries and the Interplay Between Federal and State Wetlands and Species Regulations

As the new Administration and Congress seek to redefine "Waters of the United States" and overhaul federal Endangered Species and Clean Water Act regulations, California wetlands and species laws are playing an ever more prominent role in land and water policies. This includes renewed urgency for completing the long-awaited rules governing wetlands and state waters, as well as expansive applications and enforcement of California's Streambed Alteration Program, the California Endangered Species Act, and Fully Protected Species statutes. This panel will provide a comprehensive overview of recent developments in case law and administration at the federal and state level, with a particular focus on possible trends and future issues of concern over streams, wetlands, and endangered species.

Moderator:
Eric Biber, UC Berkeley School of Law, Berkeley

Panelists:
Clark Morrison, Cox, Castle & Nicholson LLP, San Francisco
Ken Sanchez, WRA, Inc., San Rafael
Deborah Sivas, Stanford Law School, Stanford

Hotel Reservation Form

October 19-22, 2017, Tenaya Lodge at Yosemite
2017 Environmental Law Conference at Yosemite®

HOTEL RESERVATION DEADLINE: **SEPTEMBER 18, 2017**
HOTEL RESERVATIONS PROCEDURE: Please confirm early as rooms will sell out.
TELEPHONE RESERVATIONS ARE NOT ACCEPTED.

1. To make your hotel reservation please complete the registration form below and send with one night's deposit (check or credit card) via Mail to Tenaya Lodge, P.O. Box 159, Fish Camp, CA 93623 or Fax Attn: Candi – 559-683-0249. (Telephone reservations will not be accepted.)
2. Deposits: Each room reservation must be prepaid by a credit card or check in the amount of the first night's room and tax. The room rate will be $205 plus occupancy tax per night. Deposit will be required at time of booking.
3. Check-in time is 3:00 pm and check-out time is 11:00 am.
4. Cancellation Policy: Reservations must be canceled 7 days prior to arrival to receive a full refund. Cancellation within the 7-day period will result in forfeiture of your deposit.
5. All reductions to a guest's stay must be received 48 hours or more prior to arrival. If a reduction is made within 48 hours of arrival, the guest will be required to pay for the original length of stay.
6. "No shows" will be charged the contracted nightly rate for each night the reserved room is not occupied by the individual, up to and including the entire length of stay.
7. Early departures and/or late arrival will be charged the contracted nightly rate for each night the reserved room is not occupied by the individual, up to and including the entire length of stay.

Complete the information on this form and send to the Tenaya Lodge by fax or mail. Online reservations accepted. Telephone reservations not accepted. DO NOT MAIL THIS FORM TO THE STATE BAR.

GUEST INFORMATION:

Name: _____

Sharing With: _____

Number of Persons in Room: _____ Date of Arrival: _____

(To avoid duplicate reservations, if sharing a room only one should complete form)

Date of Departure: _____

Firm/Organization: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

TYPE OF ACCOMMODATIONS:
(i.e. King, Double, etc. All are on request only.)

_____

SPECIAL NEEDS:
(i.e. wheelchair accessible, pet friendly room, outdoor access for smoking, etc.)

_____

DEPOSIT:
I authorize the Tenaya Lodge to use my credit card for my hotel reservation.

❑ American Express ❑ Diners Club ❑ Discover ❑ MasterCard ❑ VISA

Account Number: _____

Expiration Date: _____

Cardholder's Name: _____

Cardholder's Signature: _____

If you have not received a confirmation letter within 1 week, please call the Tenaya Lodge at 559-683-6555.



To book online go to www.tenayalodge.com and enter the **Group Code: 30Z2X4**

FOR ONLINE RESERVATIONS ONLY



Alternate Accommodations Near the Conference Location

The Environmental Law Conference at Yosemite® will be held at the Tenaya Lodge, located in the town of Fish Camp, two miles outside the southern entrance to Yosemite National Park. Although it will be more convenient to stay at the host facility, some attendees may choose to stay elsewhere. Following is a list of alternative accommodations located near the entrance. Keep in mind that Bass Lake and Oakhurst are approximately fourteen miles away.

Fish Camp	
Narrow Gauge Inn	(559) 683-7720
Bass Lake	
Pines Resort and Chalets	(559) 642-3121
Oakhurst	
Oakhurst Lodge	(559) 683-4417
Shilo Inn	(888) 265-7733
Yosemite Gateway, Best Western	(559) 683-2378
Yosemite National Park	
Big Trees Lodge	(888) 413-8869
National Park Camping	(800) 436-7275
Rush Creek Lodge	(209) 379-2373
The Redwoods Cottages	(209) 375-6666
Yosemite West Condominiums	(800) 640-9099
Martin Lovely, Vacation Rentals inside Yosemite Park	(209) 375-6554



2017 Registration Information

Conference Registration-deadline OCTOBER 12, 2017

The Environmental Law Conference at Yosemite® is a popular event that sells out in advance. Conference registration fees are $535 for Section Members (or $610 for non-Section members, which includes one year of Section Membership); $395 for Section members employed by government or non-profit agencies; and $295 for law students. The fee includes educational programs, USB drive, three (3) continental breakfasts and two (2) receptions. Registration is limited and will be on a first–come first-served basis. File the Program Registration Form and Course Selector as soon as possible, but not later than **October 12, 2017**. Mail: Program Registrations, The State Bar of California, 180 Howard Street, San Francisco CA 94105-1639, FAX: (415) 538-2368. Register Online: http://environmental.calbar.ca.gov.

Cancellations—deadline October 12, 2017

A refund (less a non-refundable fee of $50) will be made for all registration and/or ticket cancellations received in writing by October 12, 2017. Refunds will not be made for cancellations after **October 12, 2017.**

Special Assistance and Registration Information

For special assistance please call (415) 538-2582. For registration-related questions call (415) 538-2508.

Hotel Reservations Deadline – September 18, 2017.

Each registrant is responsible for his or her own hotel reservations. A limited number of rooms have been reserved at Tenaya Lodge at Yosemite at the rate of $205 single/double occupancy per night plus tax. For reservations, complete the hotel form on the previous page, or book online. Reservations are made directly with the hotel by mail, fax or online. Telephone reservations are not accepted. Online reservations can be made at www.tenayalodge.com.

USE CODE 30Z2X4

Kids Camp

The Tenaya Lodge at Yosemite will offer Kids Kamp. Activities include arts and crafts, games, and outdoor play under the supervision of qualified counselors. Reservations required 72 hours in advance. Contact the Guest Experience Center at (800) 635-5807 to make reservations. Be sure to alert staff to special education or dietary needs. Kids Kamp is available on Friday, Saturday and Sunday, from 8:00 AM to 1:30 PM. Children's and activities via Kids Kamp will be held Saturday from 6:00 PM to 10:00 PM.

Outdoor Activities in Yosemite

There are a number of activities that the Tenaya Lodge can coordinate for the entire family. For questions or to book activities, contact Tenaya Lodge Concierge Department at (888) 514-2167, www.tenaylodge.com. Note: there is a 24-hour cancellation policy on all activities.

2017 SCHOLARSHIP INFORMATION



The State Bar Environmental Law Section offers two types of scholarships to the Yosemite Conference—the Michael H. Remy Scholarship, and tuition-only scholarships. Scholarship applications were available at the Environmental Law Section's website (see www.calbar.ca.gov/environmental), and were accepted from March 29 to July 13, 2017. The application period is now closed. Scholarship awardees will be notified after August 21, 2017.

Michael H. Remy Scholarships

The State Bar Environmental Law Section is pleased to offer the **Michael H. Remy Scholarship**. In his nearly thirty years of private practice, Michael Remy represented a wide variety of public and private clients as well as nonprofit organizations. Remy assisted large corporations and small entrepreneurs alike in various permitting and environmental matters throughout the state. Many counties, cities, and special districts relied on Remy's counsel in the processing, environmental review, and litigation of large and small projects. Some of his most notable environmental accomplishments were: heading the successful political and legal efforts to shut down the Rancho Seco Nuclear Power Plant; and representing the Sierra Club and William Hewlett against the conversion of Shirley Canyon to a commercial ski run by the Squaw Valley Ski Corporation. In 1990, the Environmental Council of Sacramento named Remy "Environmentalist of the Year." Remy was widely admired and loved by his colleagues, friends and family, who regarded him as a man of extraordinary intelligence, personal integrity, kindness, and generosity. Remy's warm presence is sorely missed by everyone at Remy Moose Manley, LLP, but even in his absence, his memory continues to provide guidance and inspiration.

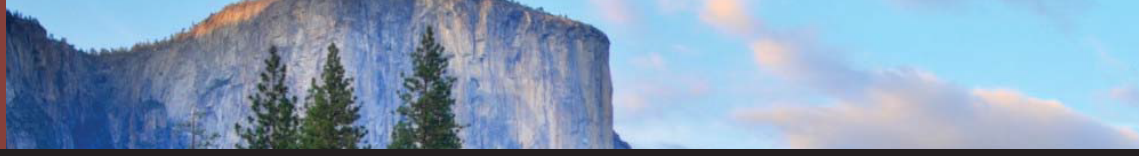
This scholarship, sponsored by Remy Moose Manley, LLP in memory of former Environmental Law Section member and advisor, Michael H. Remy, includes tuition, travel and room for the 2017 Environmental Law Conference at Yosemite®. There are up to five (5) scholarships of this type available, which is designed primarily, though not exclusively, for law students.

Tuition-Only Scholarships

The Environmental Law Section plans to offer at least 25 tuition-only scholarships to attend the 2017 Environmental Law Conference at Yosemite®.

The Section thanks the following contributors for their support of the 2017 Yosemite Conference Scholarship program.

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October 19-22, 2017, Tenaya Lodge at Yosemite
2017 Environmental Law Conference at Yosemite®

Pre-Registration Deadline: Received by October 12th

3 Ways to Register!

(Please keep a copy of your forms)

1. Online: Register online at http://environmental.calbar.ca.gov
2. Fax: Complete the Registration and Course Selector forms and fax to: Program Registrations at (415) 538-2368. Credit card payments only. Do not mail original form if faxing.
3. Mail: Complete the Registration and Course Selector forms and mail to Program Registrations, The State Bar of California, 180 Howard Street, San Francisco, CA 94105

Note: One registrant per form. Photocopies may be used.

Bar Number: _____

First/Last Name: _____

Firm: _____

Firm Address: _____

City, State: _____ Zip: _____

Phone Number: _____

E-mail Address:* _____

* Required for email confirmation

❑ Check here if you do not want your information released.

Registration Fees:

❑ Environmental Law Section Members	$525
❑ Environmental Law Section Members employed by Government or Non-Profit Agencies	$395
❑ Law Student Rate	$295
❑ Non Environmental Law Section Members* (*$85 of the non-member registration fee will be credited to 2018 Section membership dues.)	$610

For Registration Information Call (415) 538-2508

Ticketed Events:

Thursday, October 19, 2017

❑ [28] Thursday Welcome Reception # Attending ____ FREE

Friday, October 20, 2017

❑ [29] Continental Breakfast # Attending ____ FREE

Saturday, October 21, 2017

❑ [30] Continental Breakfast # Attending ____ FREE

❑ [31] Saturday Pre-Dinner Reception # Attending ____ FREE

❑ [32] Saturday Banquet (Adults) _____ @ $60 each =_____

❑ [33] Saturday Banquet (Children) _____ @ $35 each = _____

Please Select Entree Choice:

❑ [34] Beef ❑ [35] Fish ❑ [36] Vegetarian

❑ [37] Dessert Reception # Attending ____ FREE

Sunday, October 22, 2017

❑ [38] Continental Breakfast # Attending ____ FREE

Commemorative T-Shirt (while supplies last) :

❑ [39] Adult XLarge $20 ea ❑ [40] Adult Large $20 ea

❑ [41] Adult Med $20 ea ❑ [42] Adult Small $20 ea

❑ [43] Child Large $15 ea ❑ [44] Child Med $15 ea

❑ [45] Child Small $15 ea

Registration Total = _____

Ticketed Events = _____

TOTAL AMOUNT ENCLOSED OR TO BE CHARGED $ _____

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Registration fees may be paid by check, VISA or MasterCard. No other credit cards will be accepted. Make checks payable The State Bar of California.

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Course Selector

October 19-22, 2017 Tenaya Lodge at Yosemite
2017 Environmental Law Conference At Yosemite®

Listed below are the MCLE sessions for the 2017 Conference. Pre-register to ensure a seat. Keep this form with your Program Registration.

Name:_____

Bar # _____

FRIDAY OCTOBER 20, 2017

8:00 am-9:00 am | .75 Hour MCLE

- ❑ Session 1: Friday General Session: **David Bernhardt**

9:45 am-11:15 am | 1.5 Hours MCLE

- ❑ Session 2: Looking for "Buried Treasures" and Then Doing the Deal: The Latest Challenges and Tips in Developing, Selling, Buying and Leasing Contaminated Sites
- ❑ Session 3: The Dynamic Policy, Politics, and Law of Desalination
- ❑ Session 4: CEQA and the Tangled Web of Environmental Laws
- ❑ Session 5: New California Legislation: The Latest from Sacramento

11:30 am-1:00 pm | 1.5 Hours MCLE

- ❑ Session 6: Federal Chemical Reform as Seen Through the California Lens
- ❑ Session 7: Cooperative Federalism and Water Resources under the Trump Administration
- ❑ Session 8: Results from the Laboratory of Democracy: Which California Climate Policies are Working Best? Which are Not
- ❑ Session 9: Cannabis from Medicinal to Recreational: What It Means for You and Your Practice (1 Hour of Legal Ethics)

Saturday OCTOBER 21, 2017

8:00 am-9:00 am | .75 Hour MCLE

- ❑ Session 10: Saturday General Session: **Martha Guzman Aceves**

9:15 am-10:45 am | 1.5 Hours MCLE

- ❑ Session 11: Getting to 50% Renewables and Beyond: How California Plans to Achieve its 2030 Goals
- ❑ Session 12: Diversity Roundtable: Developing Diverse Leadership in Environmental Law and Policy (1 Hour of Elimination of Bias)
- ❑ Session 13: Recent Environmental Law Developments in the U.S. Supreme Court and Ninth Circuit Court of Appeals
- ❑ Session 14: Public Lands: Past Achievements, Current Threats, and Future Opportunities

11:00 am-12:30 pm | 1.5 Hours MCLE

- ❑ Session 15: A View from the Bench: Marking the California Supreme Court's Jurisprudence in Environmental Law
- ❑ Session 16: Controlling Air Pollution from Mobile Sources in California
- ❑ Session 17: Respecting California Native Tribes as Sovereign Nations (1.5 Hours of Elimination of Bias)
- ❑ Session 18: The Fix is In: Would Re-Engineering Save or Undermine the Delta?

SUNDAY, OCTOBER 22, 2017

8:00 am-9:00 am | .75 Hour MCLE

- ❑ Session 19: Sunday General Session: **Honorable Goodwin H. Liu**

9:15 am-10:45 am | 1.5 Hours MCLE

- ❑ Session 20: Built to Spill, or Built to Last? A Long View of the 2017 Oroville Dam Crisis
- ❑ Session 21: CEQA Update—A Perennial Favorite
- ❑ Session 22: U.S. Climate Change Regulation at a Crossroads: The Big Picture
- ❑ Session 23: Contaminated Groundwater as a Resource & Emerging Contaminants

11:00 am-12:30 pm | 1.5 Hours MCLE

- ❑ Session 24: 50th Anniversary of the State Water Resources Control Board
- ❑ Session 25: The Future of Energy Storage in the Aftermath of the Aliso Canyon Leak
- ❑ Session 26: CEQA and Climate Change
- ❑ Session 27: Receding and Advancing Jurisdictional Boundaries and the Interplay Between Federal and State Wetlands and Species Regulations

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The Environmental Law Section
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2017 Environmental Law Conference at Yosemite®

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Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:05 AM

Conversation Contents

Discussion on Improvements on CVP/SWP Partnership

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Thu Aug 16 2018 11:08:52 GMT-0600 (MDT)
To:	"Bernhardt, David (b) (6) @ios.doi.gov>
CC:	Daniel Jorjani <daniel.jorjani@sol.doi.gov>, Scott De La Vega <scott.delavega@sol.doi.gov>, Heather Gottry <heather.gottry@sol.doi.gov>, "Rees, Gareth" <gareth_rees@ios.doi.gov>
Subject:	Discussion on Improvements on CVP/SWP Partnership

Hi David,

Thank you for discussing the upcoming meeting on improvements on the CVP/SWP partnership to be held in California next week. I see nothing that precludes your meeting with the Governor of California at this meeting or your participation in the meeting itself.

As we discussed, you are beyond the 1-year covered relationship period under 5 CFR 2635.502 and are therefore subject only to the Trump administration ethics pledge restrictions.

As you know, the pledge prohibits you from participating in any party matter in which a former employer or former client (neither term applies to entities of State or local governments, such as Westlands) is or represents a party. This includes any meeting or other communication with a former employer or client relating to your official duties, unless the communication applies to a broad policy option or particular matter of general applicability (there are no specific parties to the matter) and five or more separate stakeholders are in attendance.

You expect that at least 12 people will be participating in the meeting at any given time. There is no indication that any member of BHFS will be at the meeting, nor do you believe that any party matters in which BHFS is or represents a party will be discussed. Additionally, there is no indication that any of your former clients (again, this does not include Westlands, since Westlands is a state entity and therefore not considered a former client under the pledge) will be at the meeting, nor is there any indication that any party matters in which any former client (under the pledge) is or represents a party will be discussed. Of course, if any of these situations should arise, you should not participate in that portion of the meeting.

Please let me know if you have any questions or would care to discuss, or if additional information becomes available that you would like me to consider.

Thank you very much,
Ed

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--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6) [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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"de la Vega, Scott" <scott.delavega@sol.doi.gov>

From:	"de la Vega, Scott" <scott.delavega@sol.doi.gov>
Sent:	Thu Aug 16 2018 11:25:36 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
CC:	Heather Gottry <heather.gottry@sol.doi.gov>
Subject:	Re: Discussion on Improvements on CVP/SWP Partnership

Thank you very much for doing this Ed. I hope you and your family are well. Please try to get some rest and enjoy some down time!

Scott

On Thu, Aug 16, 2018 at 1:08 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> Thank you for discussing the upcoming meeting on improvements on the CVP/SWP partnership to be held in California next week. I see nothing that precludes your meeting with the Governor of California at this meeting or your participation in the meeting itself.
>
> As we discussed, you are beyond the 1-year covered relationship period under 5 CFR 2635.502 and are therefore subject only to the Trump administration ethics pledge restrictions.
>
> As you know, the pledge prohibits you from participating in any party matter in which a former employer or former client (neither term applies to entities of State or local governments, such as Westlands) is or represents a party. This includes any meeting or other communication with a former employer or client relating to your official duties, unless the communication applies to a broad policy option or particular matter of general applicability (there are no specific parties to the matter) and five or more separate stakeholders are in attendance.
>
> You expect that at least 12 people will be participating in the meeting at any given time. There is no indication that any member of BHFS will be at the meeting, nor do you believe that any party matters in which BHFS is or represents a party will be discussed. Additionally, there is no indication that any of your former clients (again, this does not include Westlands, since Westlands is a state entity and therefore not considered a former client under the pledge) will be at the meeting, nor is there any indication that any party matters in which any former client (under the pledge) is or represents a party will be discussed. Of course, if any of these situations should arise, you should not participate in that portion of the meeting.
>
> Please let me know if you have any questions or would care to discuss, or if additional information becomes available that you would like me to consider.
>
> Thank you very much,
> Ed

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Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6) [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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--
Scott A. de la Vega
Director, Departmental Ethics Office
& Designated Agency Ethics Official
U.S. Department of the Interior
(O) (202) 208-3038
(C (b) (6) [redacted]
scott.delavega@sol.doi.gov
Visit us online at: www.doi.gov/ethics

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Thu Aug 16 2018 15:01:31 GMT-0600 (MDT)
To:	"de la Vega, Scott" <scott.delavega@sol.doi.gov>
CC:	Heather Gottry <heather.gottry@sol.doi.gov>
Subject:	Re: Discussion on Improvements on CVP/SWP Partnership

Thanks, Scott!

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--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

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Main Interior Building
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Office: (202) 208-5916
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E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Thu, Aug 16, 2018 at 1:25 PM, de la Vega, Scott <scott.delavega@sol.doi.gov> wrote:

> Thank you very much for doing this Ed. I hope you and your family are well. Please try to get some rest and enjoy some down time!
>
> Scott
>
> On Thu, Aug 16, 2018 at 1:08 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:
>
> > Hi David,

Thank you for discussing the upcoming meeting on improvements on the CVP/SWP partnership to be held in California next week. I see nothing that precludes your meeting with the Governor of California at this meeting or your participation in the meeting itself.

As we discussed, you are beyond the 1-year covered relationship period under 5 CFR 2635.502 and are therefore subject only to the Trump administration ethics pledge restrictions.

As you know, the pledge prohibits you from participating in any party matter in which a former employer or former client (neither term applies to entities of State or local governments, such as Westlands) is or represents a party. This includes any meeting or other communication with a former employer or client relating to your official duties, unless the communication applies to a broad policy option or particular matter of general applicability (there are no specific parties to the matter) and five or more separate stakeholders are in attendance.

You expect that at least 12 people will be participating in the meeting at any given time. There is no indication that any member of BHFS will be at the meeting, nor do you believe that any party matters in which BHFS is or represents a party will be discussed. Additionally, there is no indication that any of your former clients (again, this does not include Westlands, since Westlands is a state entity and therefore not considered a former client under the pledge) will be at the meeting, nor is there any indication that any party matters in which any former client (under the pledge) is or represents a party will be discussed. Of course, if any of these situations should arise, you should not participate in that portion of the meeting.

Please let me know if you have any questions or would care to discuss, or if additional information becomes available that you would like me to consider.

Thank you very much,
Ed

- Stewardship for America with Integrity and Excellence -

--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Ce (b) (6)

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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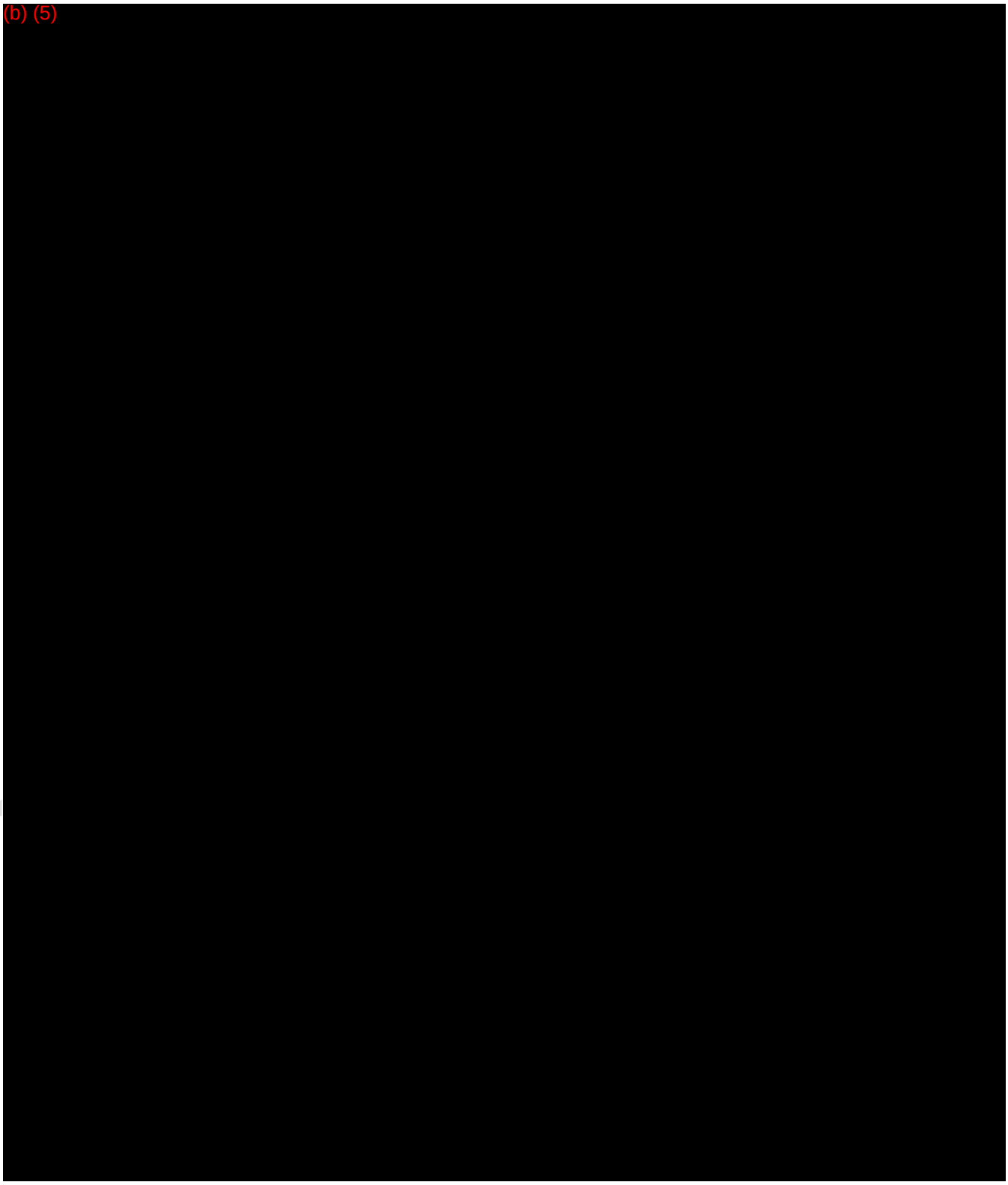
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Scott A. de la Vega
Director, Departmental Ethics Office
& Designated Agency Ethics Official
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(O) (202) 208-3038
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scott.delavega@sol.doi.gov
Visit us online at: www.doi.gov/ethics

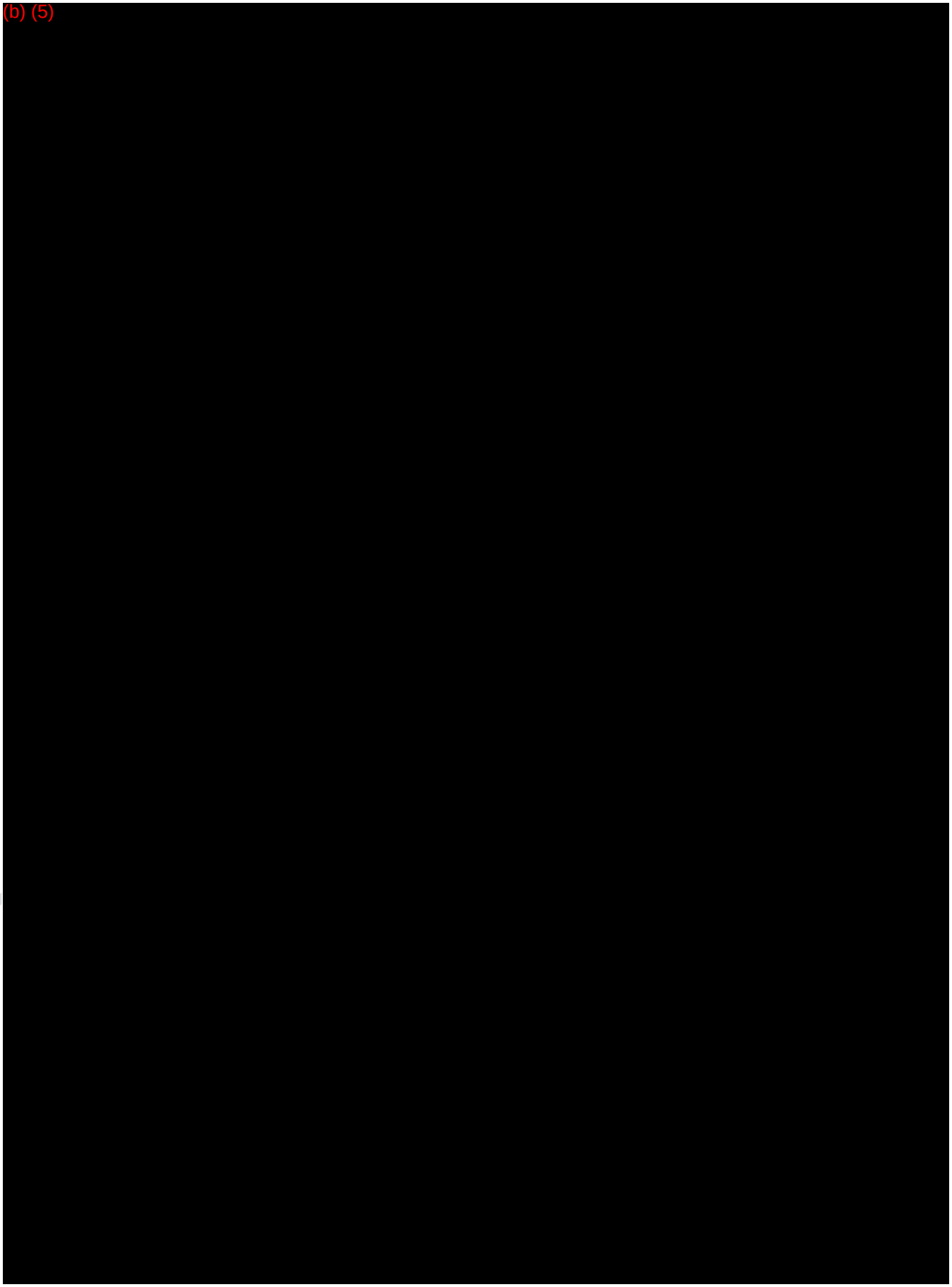
Public service is a public trust.

DAY ONE ALL EMPLOYEE MESSAGE

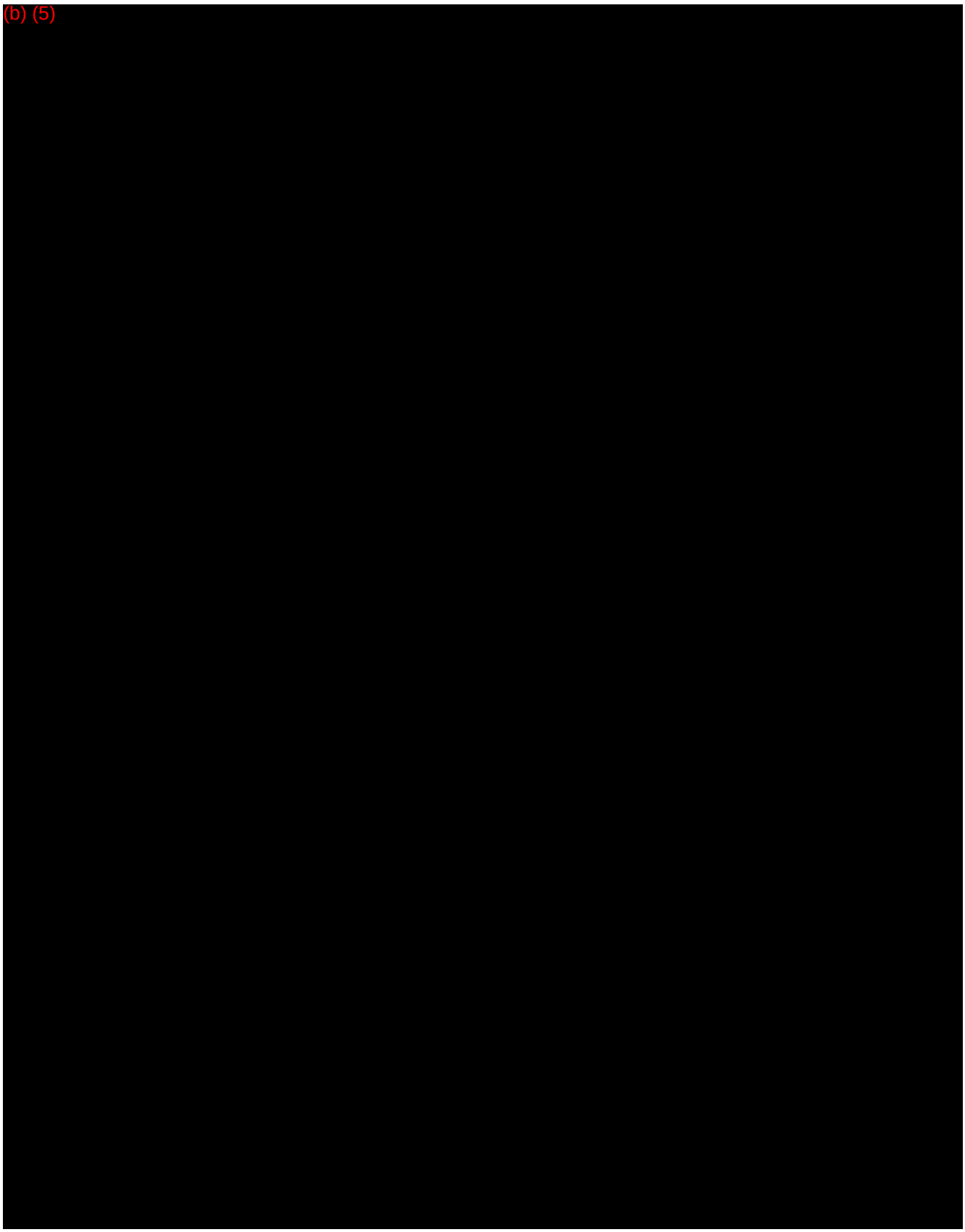
All Employee Message

(b) (5)




(b) (5)

(b) (5)





DRAFT

DEO Record of Review of Non-Federal Travel Request
Ed McDonnell, Deputy Director
July 23, 2018

Requestor: Deputy Secretary David Bernhardt

Event: State of Colorado Energy Luncheon

Date(s): July 26, 2018

This memorandum summarizes the ethics review completed by the Departmental Ethics Office (DEO) of the DI-2000 form submitted for Deputy Secretary David Bernhardt to request the acceptance of the offer of free attendance from the American Petroleum Institute (API) for their upcoming State of Colorado Energy Luncheon in Denver, Colorado.

Pursuant to 31 U.S.C. § 1353, the Department of Interior is authorized to accept reimbursement or in-kind donations from non-Federal sources for an employee's transportation expenses (including food, lodging, incidental expenses, and registration costs) to certain functions related to the employee's official duties. Acceptance of travel expenses from non-Federal sources is only permitted when the employee's travel is for attendance at a conference, meeting, seminar, training course, speaking engagement, or similar event that takes place away from the employee's official duty station. Travel under this authority may not be used for events required to carry out DOI's statutory and regulatory functions, such as investigations, inspections, audits, site visits, or to attend vendor promotional training.

In reviewing this request, consistent with 41 C.F.R. § 304-5.3, the DEO considered whether the acceptance of the non-Federal payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. In particular, the DEO considered the following factors:

1. Identity of the non-Federal source;
2. Purpose of the meeting;
3. Identity of other expected participants;
4. Nature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source;
5. Significance of the employee's role in any such matter; and
6. Monetary value and character of the travel benefits offered by the non-Federal source.

First, the donor of the gift of free attendance is the API. The API is a national trade association representing all facets of the oil and natural gas industry. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. Although its focus is primarily domestic, in recent years its work has expanded to include a growing international dimension. API's mission is to promote safety across the industry globally and to influence public policy in support of a strong, viable U.S. oil and natural gas industry. API speaks for the oil and natural

gas industry to the public, Congress and the Executive Branch, state governments, and the media. API negotiates with regulatory agencies, represents the industry in legal proceedings, participates in coalitions and works in partnership with other associations to achieve its members' public policy goals. API conducts or sponsors research ranging from economic analyses to toxicological testing and collects, maintains, and publishes statistics and data on all aspects of U.S. oil and natural gas industry operations. API develops petroleum, natural gas, and petrochemical equipment and operating standards and provides certification services.

Second, the stated purpose of the State of Colorado Energy Luncheon is to conduct a panel discussion on western energy issues and the event meets the definition of a meeting or similar function defined in 41 C.F.R. § 304-2.1.

Third, the API expects the event to be attended by 300-400 industry and business executives, elected officials, and the media.

Fourth, while there are a number of policy, regulatory and other matters of interest to the members of the API pending at the Department of Interior, it is important that the Department engage in dialog with oil and natural gas industry and business executives, elected officials, and the media regarding such issues as the future of energy production in the West and the role of industry, the Federal Government, and the States.

Finally, the cost of the food and beverages for the luncheon is approximately $45 and none of the attendees are being charged to attend the event.

Based on a review of the factors above, the DEO does not believe that if the Department of Interior accepts the non-Federal payment of free attendance offered to Deputy Secretary Bernhardt that a reasonable person with knowledge of all the facts relevant to a particular case would question the integrity of agency programs or operations. Therefore, the DEO has determined that this gift from a non-Federal source complies with the ethics conditions for acceptance of travel payments.

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Delayed response: Out of Office Feb. 28-Mar. 2, 2018 Re: DS Bernhardt - Quick recusal question

1 message

Snow, Robert <robert.snow@sol.doi.gov> Wed, Feb 28, 2018 at 9:40 AM
To: edward.mcdonnell@sol.doi.gov

Hello, I am out of the office from Wed-Friday (Feb 28-Mar.2). I will have limited access to email during this period and will respond as soon as possible.

Thank you very much, Bob Snow

FREE ATTENDANCE AT WIDELY ATTENDED GATHERING (WAG) OR SPEAKING ENGAGEMENT

-- *ATTACH COPY OF EVENT AGENDA AND COPY OF INVITATION*

Employee completes this block and questions 1a through 10. After review, employee retains the original form; supervisor and ethics official retain a copy.

EMPLOYEE'S NAME (please print)	TELEPHONE NUMBER
David Bernhardt	202-208-6291
TITLE/POSITION Deputy Secretary ARE YOU A POLITICAL APPOINTEE (e.g., PAS, Non-Career SES, Schedule C)? ☒ Yes ☐ No	E-MAIL ADDRESS (b) (6) [redacted] os.doi.gov
BUREAU/OFFICE Office of the Secretary	
NAME OF EVENT Annual Meeting of the Association of Fish and Wildlife Agencies Dinner	DATE OF EVENT September 10, 2017
LOCATION OF EVENT *(City/State)* Snowbird, UT	TIME OF EVENT 6:00pm to 9:00pm
NAME OF EVENT SPONSOR Association of Fish and Wildlife Agencies	IS SPONSOR A 501(c)3 ORGANIZATION OR A MEDIA ORGANIZATION? ☒ Yes ☐ No

1a. What is the purpose of the event? Invitation only dinner with state fish and wildlife directors

1b. Is the event a fundraiser? ☐ Yes ☒ No

2a. Did someone other than the sponsor invite you or ask the sponsor to invite you? ~~☒ Yes~~ ☒ No EFM
- If Yes, who? Ron Regan AFWA (Host of speaking event)

2b. Will someone other than the sponsor pay the cost of your attendance? ☐ Yes ☒ No
- If Yes, who?
- Is this a 501(c)3 organization or a media organization? ☐ Yes ☐ No

3a. Will you be on official duty to participate as a speaker, panel member, or otherwise to formally present information on behalf of the Department of the Interior? ☐ Yes ☒ No

3b. If you answered Yes to 3a and it's a multi-day event, have you been offered free attendance on the day(s) on which you are not scheduled to participate as a speaker, panel member, etc.? ☐ Yes ☐ No

3c. If you answered Yes to 3b, would you like to accept the offer of free attendance for the day(s) on which you are not scheduled to participate as a speaker, panel member, etc.? ☐ Yes ☐ No

4. How will your attendance at this event further agency programs and operations? Will meet and interact with state and local officials who work on issues important to DOI

5a. What other types of people are expected to attend? (For example, members from throughout a given industry; other Federal, state, or local government officials; etc.) State and local officials

5b. Will the attendees represent a range of persons interested in a given matter? ☒ Yes ☐ No
- If Yes, what matter? conservation

5c. Approximately how many people are expected to attend? 60

6. What is the monetary value of the gift of free attendance (conference fee and/or food, refreshments, entertainment, instruction, and materials furnished to all attendees as an integral part of the event) and how was this cost determined? (Attach separate sheet, if necessary.) **$75**

7. Does the person who extended the invitation (i.e., who is paying the costs for your attendance) have interests that may be substantially affected by the performance or nonperformance of your official duties? If the invitation is from an organization, does the majority of its members have such interests? ☒ Yes ☐ No

- If Yes:
  - Describe the nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation. NONE
  - What is the significance of your role in the matter?
  - What is the importance of the event to the agency?

8. Does the invitation include attendance by your spouse or other guest? ☐ Yes ☒ No
   - If yes, will other attendees at the event generally be accompanied by their spouse or other guest? ☐ Yes ☐ No
   - Would you like to accept the offer of free attendance for your spouse or other guest to attend? ☐ Yes ☐ No

9a. Will the event be after duty hours, e.g., evening, weekend? ☒ Yes ☐ No

9b. If during duty hours, will you be on leave or excused absence? ☐ Yes ☐ No

10. Are you required to file a financial disclosure report (OGE Form 450 or SF 278)? ☒ Yes ☐ No

EMPLOYEE SIGNATURE: David Bernhardt DATE: 9/7/17 EFM

Per PHONCON with Gareth Rees

ETHICS OFFICIAL REVIEW

NAME: Ed McDonnell ED MCDONNELL

-- This request meets the ethics requirements for acceptance of free attendance at the event by the employee, subject to supervisor's approval. ☑ Yes ☐ No

-- This request meets the ethics requirements for acceptance of free attendance at the event by the employee's spouse or other guest, subject to supervisor's approval. ☐ Yes ☐ No

Comments ***(For example, note whether the lobbyist gift ban applies, whether the gift must be reported on a financial disclosure report, etc.)*:**

ETHICS OFFICIAL SIGNATURE: Ed McDonnell DATE: 9/8/17

SUPERVISOR REVIEW

NAME

☐ I approve. Attendance is in the interest of the agency because it will further agency programs and operations. If the answer to question 7 is Yes, I have found that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his or her official duties after considering the importance of the event to the agency; the nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation; the significance of the employee's role in the matter; the purpose of the event; the identity of other expected participants; and the market value of the gift of free attendance.

☐ I disapprove.

RETURN A COMPLETED COPY TO THE ETHICS OFFICE – MS 7346.
KEEP THE ORIGINAL FOR EMPLOYEE RECORDS.

SUPERVISOR SIGNATURE | DATE

If approved, you may accept waiver of all or part of a conference or other fee and/or the provision of food, refreshments, entertainment, instruction, and materials furnished to all attendees as an integral part of the event. You may not accept travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

Privacy Act Statement. The information obtained from this form will be used to determine whether the filer is in compliance with the Executive Branch gift acceptance regulations governing free attendance at widely attended gatherings or speaking engagements (5 CFR 2635.204(g)). The general authority for collecting this information is contained in 5 CFR 2635.204(g)(3).

REPORT OF PAYMENTS ACCEPTED FROM NON-FEDERAL SOURCES UNDER 31 U.S.C. § 1353
U.S. DEPARTMENT OF THE INTERIOR

☐ For Period Beginning October 1, 201___ and Ending March 31, 201___
☑ For Period Beginning April 1, 2018 and Ending September 30, 2018

This report implements 31 U.S.C. § 1353. It does not supersede other reports that may have to be filed when travel or travel expenses are accepted under other authority. For definitions and policies, see 41 CFR Part 304-1.

1. Bureau/Office: Office of the Secretary/Office of the Deputy Secretary

2. For Report of this Event
Page 1 of 2

3. Event *(Identify meeting or similar function for which payment was accepted under 31 U.S.C. § 1353. Forms documenting payments of $250 or more per employee and/or accompanying spouse must be sent to the Department Ethics Office.)*
State Colorado Energy Luncheon

4. Sponsor of the Event: American Petroleum Institute

5. Location of Event: Grand Hyatt, Pinnacle Club, Denver, CO

6. Dates of Event
From: July 26, 2018 To: July 26, 2018

7. Nature of Event

8. Employee
Name: David Bernhardt
Official Title: Deputy Secretary
Office: Secretary
Travel Dates:
From: 07/25/2018 To 07/27/2018

9. Accompanying Spouse (*If Applicable*)
Name:
Employee:
Government Position:
Travel Dates:
From: _____ To _____

10. Non-Federal Sources of Payment *(Identify all non-Federal sources from which payment was accepted under 31 U.S.C. § 1353 for this employee and/or accompanying spouse in connection with this event.)*
A. American Petroleum Institute
C. _____
B. _____
D. _____

11. Nature of Payments *(Itemize on back of form.)*

12. Nature of Payments *(Indicate total amount of payments accepted under 31 U.S.C. § 1353 for this employee and/or accompanying spouse in connection with this event.)*

Total of Payments to Agency by Check $ _____ Total of payments Provided in Kind $ 45.00

13. Certification. The statements in this report are true, complete, and correct to the best of my knowledge and belief.

Employee's Signature

7/1/18
Date

14. I have determined that this travel situation complies with the ethics conditions for acceptance of travel payments under 41 CFR 304-1.4.

Ethics Review (By Ethics Official)

7/23/18
Date

15. Approval.

Supervisor's (or Authorizing Official's) Signature

Title

Date

11. Nature of Payments. For each payment accepted, identify (a) nature of benefit; (b) mode of payment; (c) individual for whom provided; (d) non-Federal source; and (e) amount of payment. When describing mode of payment, use "C" for check or "K" for in kind. Use "E" for employee or "S" for spouse when identifying individual for whom payment was provided, and use applicable letter from question 10 to identify non-Federal source. To value benefits provided in kind, use cost to other participants for waiver of conference or training fee. For transportation or lodging, use cost to donor or consult rate for similar benefit in effect at time benefit provided. For travel on private or chartered aircraft, determine value by computing total constructive cost of transportation using premium class air fare. For meals and other benefits, use cost to donor or reasonable approximation.

(a) Nature of Benefit	(b) C (check) or K (in kind)	(c) E (employee) or S (spouse)	(d) A,B,C, or D	(e) Amount of Payment
Lunch	K	E		$45.00

ACCEPTING OFFICIAL TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

As a rule, whenever you are on official travel for the Department of the Interior, DOI or another Federal agency should pay for your travel expenses. Sometimes, however, a private sector organization may express its generosity by offering to pay for all or part of the official travel expenses incurred by an employee. When this occurs, the statutory provisions of 31 U.S.C. § 1353 may be used to authorize the Department to accept the employee's travel related expenses. Regulations implementing this statute are contained in 41 C.F.R. § 304-1. In order to use the travel acceptance authority under 31 U.S.C. § 1353, certain conditions and procedures must be satisfied.

Conditions and Procedures for Acceptance of Travel Payments Under 31 U.S.C. § 1353

Federal regulations require that the travel authority under 31 U.S.C. § 1353 must be used, where appropriate, before any other travel acceptance authority is considered. An agency may accept payment for an employee and/or the employee's spouse's travel from a non-Federal source when the proper consideration is given to the conflict of interest criteria and a written authorization to accept payment is issued **in advance** of the travel event. Written authorization is accomplished by completing Form DI-2000. The Authorized Approving Official documents on this form that the non-Federal travel payment is:

I. For travel relating to an employee's official duties (including attendance because the employee's presence at the meeting is necessary to permit participation in the meeting by another employee or because a spouse's presence at the meeting or similar function is in the interest of the agency) under an official travel authorization issued to the employee, and to an accompanying spouse when applicable;

II. For attendance at a meeting or similar function relating to the official duties of the employee; and

III. From a non-Federal source that is not disqualified on conflict of interest grounds.

NOTE: 31 U.S.C.§ 1353 does not authorize payments to be accepted from a non-Federal source for a meeting or other event required to carry out an agency's statutory or regulatory functions. For example, a statutory or regulatory function essential to an agency's mission would include an investigation, inspection, audit, site visit or program evaluation.

In making this determination, the Authorized Approving Official shall be guided by all relevant considerations including, but not limited to:

a. The identity of the non-Federal source;
b. The purpose of the meeting or similar function;
c. The identity of other expected participants;

d. The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source;
e. The significance of the employee's role in any such matter; and
f. The monetary value and character of the travel benefits offered by the non-Federal source.

Authorized Approving Official

For purposes of this policy, the term "Authorized Approving Official" means that Department official who has been delegated the authority to approve the usual travel authorizations of the employee who will benefit from the non-Federal travel payment.

The following procedures must be satisfied before the employee begins travel:

1. Each employee (and/or the accompanying spouse) must have an approved travel authorization. Each travel authorization must contain a statement indicating that: a) all or part of the employee's travel expenses will be paid for by (name of the non-Federal source); b) the authority to accept the travel related payment is 31 U.S.C. § 1353; and c) the planned travel situation complies with the ethics conditions for acceptance under 41 C.F.R. § 304-1.

2. A form DI-2000 must also be completed and signed by the employee and approved by the Authorized Approving Official after receiving concurrence by a servicing ethics official.

3. Payment from a non-Federal source to cover the travel related expenses of an employee may be made in the form of a check or similar instrument made payable to the agency. Employees may also accept payments-in-kind (i.e. an airline ticket) on behalf of the Department and other payments when authorized to do so. Employees may not accept cash.

A copy of each completed Form DI-2000 must be filed with the Departmental Ethics Office or the bureau Deputy Ethics Counselor. These forms are collected by the Departmental Ethics Office and used as part of the required reports to the U.S. Office of Government Ethics.

Any questions regarding the use of the non-Federal travel acceptance authority under 31 U.S.C. § 1353 should be addressed to your servicing ethics counselor of the Departmental Ethics Office.

REPORT OF PAYMENTS ACCEPTED FROM NON-FEDERAL SOURCES UNDER 31 U.S.C. § 1353
U.S. DEPARTMENT OF THE INTERIOR

☐ For Period Beginning October 1, 201___ and Ending March 31, 201___
☒ For Period Beginning April 1, 2017 and Ending September 30, 2017

This report implements 31 U.S.C. § 1353. It does not supersede other reports that may have to be filed when travel or travel expenses are accepted under other authority. For definitions and policies, see 41 CFR Part 304-1.

1. Bureau/Office: Office of the Deputy Secretary

2. For Report of this Event: Page 1 of 2

3. Event *(Identify meeting or similar function for which payment was accepted under 31 U.S.C. § 1353. Forms documenting payments of $250 or more per employee and/or accompanying spouse must be sent to the Department Ethics Office.)*
Annual Meeting of the Association of Fish and Wildlife Agencies

4. Sponsor of the Event: Association of Fish and Wildlife Agencies

5. Location of Event: Snowbird, Utah

6. Dates of Event
From: September 10, 2017 To: September 13, 2017

7. Nature of Event: Conference/Annual Meeting

8. Employee
Name: David Bernhardt
Official Title: Deputy Secretary
Office: OS
Travel Dates:
From: 09/10/17 To 09/12/17

9. Accompanying Spouse (*If Applicable*)
Name:
Employee:
Government Position:
Travel Dates:
From: _____ To _____

10. Non-Federal Sources of Payment *(Identify all non-Federal sources from which payment was accepted under 31 U.S.C. § 1353 for this employee and/or accompanying spouse in connection with this event.)*
A. Association of Fish and Wildlife Agencies C. _____
B. _____ D. _____

11. Nature of Payments *(Itemize on back of form.)*

12. Nature of Payments *(Indicate total amount of payments accepted under 31 U.S.C. § 1353 for this employee and/or accompanying spouse in connection with this event.)*

Total of Payments to Agency by Check $ _____ Total of payments Provided in Kind $ 495.00

13. Certification. The statements in this report are true, complete, and correct to the best of my knowledge and belief.

[signature] 9/7/17
Employee's Signature Date

14. I have determined that this travel situation complies with the ethics conditions for acceptance of travel payments under 41 CFR 304-1.4.

[signature] 9/8/17
Ethics Review (By Ethics Official) Date

15. Approval.

_____ _____ _____
Supervisor's (or Authorizing Official's) Signature Title Date

11. Nature of Payments. For each payment accepted, identify (a) nature of benefit; (b) mode of payment; (c) individual for whom provided; (d) non-Federal source; and (e) amount of payment. When describing mode of payment, use "C" for check or "K" for in kind. Use "E" for employee or "S" for spouse when identifying individual for whom payment was provided, and use applicable letter from question 10 to identify non-Federal source. To value benefits provided in kind, use cost to other participants for waiver of conference or training fee. For transportation or lodging, use cost to donor or consult rate for similar benefit in effect at time benefit provided. For travel on private or chartered aircraft, determine value by computing total constructive cost of transportation using premium class air fare. For meals and other benefits, use cost to donor or reasonable approximation.

(a) Nature of Benefit	(b) C (check) or K (in kind)	(c) E (employee) or S (spouse)	(d) A,B,C, or D	(e) Amount of Payment
Conference fee	K	E		$495

United States Department of the Interior

Office of the Secretary

ETHICS AND CONDUCT INFORMATION BULLETIN

Bulletin No. 02-1
May 2002

Department Ethics Office
Washington, D.C.

Accepting Official Travel Payments from Non-Federal Sources

This Bulletin contains important guidance for employees who plan to travel for the Department at the expense of a non-Federal source.

As a rule, whenever you are on official travel for the Department, the Department or another Federal agency should pay for your travel expenses. Sometimes, however, a private sector organization may express its generosity by offering to pay for all or part of the official travel expenses incurred by an employee. When this occurs, the statutory provisions of 31 U.S.C. § 1353 may be used to authorize the Department to accept the employee's travel related expenses. Regulations implementing this statute are contained in 41 CFR § 304-1. In order to use the travel acceptance authority under 31 U.S.C. § 1353, certain conditions and procedures must be satisfied.

Conditions and Procedures for Acceptance of Travel Payments Under 31 U.S.C. § 1353:

Federal regulations require that the travel authority under 31 U.S.C. § 1353 must be used, where appropriate, before any other travel acceptance authority is considered. An agency may accept payment for an employee and/or the employee's spouse's travel from a non-Federal source when proper consideration is given to the conflict of interest criteria and a written authorization to accept payment is issued **in advance** of the travel event. Written authorization is accomplished by completing Form DI-2000. This form may be obtained from your servicing ethics counselor or downloaded from the internet at: www.doi.gov/ethics. The Authorized Approving Official documents on this form his or her determination that the non-Federal travel payment is:

I. For travel relating to an employee's official duties (including attendance because the employee's presence at the meeting is necessary to permit participation in the meeting by another employee or because a spouse's presence at the meeting or similar function is in the interest of the agency) under an official travel authorization issued to the employee, and to an accompanying spouse when applicable;

II. For attendance at a meeting or similar function relating to the official duties of the employee; and

III. From a non-Federal source that is not disqualified on conflict of interest grounds.

Please Note -- payment may not be accepted under this authority for a meeting or other event required to carry out an agency's statutory or regulatory functions. For example, a statutory or regulatory function essential to an agency's mission, such as an investigation, inspection, audit, site visit, or program evaluation.

In making this determination, the Authorized Approving Official shall be guided by all relevant considerations including, but not limited to:

1. The identity of the non-Federal source;
2. The purpose of the meeting or similar function;
3. The identity of other expected participants;
4. The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source;
5. The significance of the employee's role in any such matter; and
6. The monetary value and character of the travel benefits offered by the non-Federal source.

Authorized Approving Official:

For purposes of this policy, the term, "Authorized Approving Official" means that Department official who has been delegated the authority to approve the usual travel authorizations of the employee who will benefit from the non-Federal travel payment.

The following procedures must be satisfied before the employee begins his or her travel:

1. Each employee (and/or the accompanying spouse) must have an approved travel authorization. Each travel authorization must contained a statement indicating that: (a) all or part of the employee's travel expenses will be paid for by (name of the non-Federal source); (b) The authority to accept the travel related payment is 31 U.S.C. § 1353; and (c) and the planned travel situation complies with the ethics conditions for acceptance under 41CFR § 304-1.

2. A Form DI-2000 must also be completed and signed by the employee and approved by the Authorized Approving Official after receiving concurrence by a servicing ethics official.

3. Payment from a non-Federal source to cover the travel related expenses of an employee may be made in the form of a check or similar instrument made payable to the agency. Employees may also accept payments-in-kind (i.e., an airline ticket) on behalf of the Department and other payments when authorized to do so. Employees may not accept cash.

A copy of each completed Form DI-2000 must be filed with the Bureau or Office Deputy Ethics Counselor. These forms are collected by the Department Ethics Office and used as part of the required reports to the U.S. Office of Government Ethics.

Any questions regarding the use of the non-Federal travel acceptance authority under 31 U.S.C. § 1353, should be addressed to your servicing ethics counselor or the Department Ethics Office staff.

Shayla Freeman Simmons

Shayla Freeman Simmons
Designated Agency Ethics Official



Federal Register

Wednesday,
October 15, 2008

Part IV

Department of the Interior

Office of the Secretary

43 CFR Part 46

Implementation of the National Environmental Policy Act (NEPA) of 1969; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 46

RIN 1090–AA95

Implementation of the National Environmental Policy Act (NEPA) of 1969

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is amending its regulations by adding a new part to codify its procedures for implementing the National Environmental Policy Act (NEPA), which are currently located in chapters 1–6 of Part 516 of the Departmental Manual (DM). This rule contains Departmental policies and procedures for compliance with NEPA, Executive Order (E.O.) 11514, E.O. 13352 and the Council on Environmental Quality's (CEQ) regulations (40 CFR Parts 1500–1508). Department officials will use this rule in conjunction with and supplementary to these authorities. The Department believes that codifying the procedures in regulations that are consistent with NEPA and the CEQ regulations will provide greater visibility to that which was previously contained in the DM and enhance cooperative conservation by highlighting opportunities for public engagement and input in the NEPA process.

The Department will continue to maintain Department's information and explanatory guidance pertaining to NEPA in the DM and Environmental Statement Memoranda (ESM) to assist bureaus in complying with NEPA. Bureau-specific NEPA procedures remain in 516 DM Chapters 8–15 and bureau guidance in explanatory and informational directives. Maintaining explanatory information in the Department's DM chapters and ESM, and bureau-specific explanatory and informational directives will facilitate timely responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to assist field offices when implementing the NEPA process.

EFFECTIVE DATE: November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Vijai N. Rai, Team Leader, Natural Resources Management, Office of Environmental Policy and Compliance, 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–6661. E-mail: *vijai_rai@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: As a part of the conversion of the Department's NEPA procedures from 516 DM to regulations, a number of key changes have been made. This rule:

- Clarifies which actions are subject to NEPA section 102(2) by locating all relevant CEQ guidance in one place, along with supplementary Department procedures.
- Establishes the Department's documentation requirements for urgently needed emergency responses. The Responsible Official (RO) must assess and minimize potential environmental damage to the extent consistent with protecting life, property, and important natural, cultural and historic resources and, after the emergency, document that an emergency existed and describe the responsive actions taken.
- Incorporates CEQ guidance that the effects of a past action relevant to a cumulative impacts analysis of a proposed action may in some cases be documented by describing the current state of the resource the RO expects will be affected.
- Clarifies that the Department has discretion to determine, on a case-by-case basis, how to involve the public in the preparation of EAs.
- Highlights that adaptive management strategies may be incorporated into alternatives, including the proposed action.
- Incorporates language from the statute and CEQ guidance that EAs need only analyze the proposed action and may proceed without consideration of additional alternatives when there are no unresolved conflicts concerning alternative uses of available resources.

This rule is organized under subparts A through E, covering the material currently in 516 DM Chapters 1 through 6. The Department is replacing these chapters with new 516 DM Chapters 1–3, which will include explanatory guidance on these regulations. These revised chapters will be available to the public before the effective date of this rule and will be found at *http://www.doi.gov/oepc*. The Department did not include 516 DM Chapter 7 in this rule because it provides internal administrative guidance specific to Department review of environmental documents and project proposals prepared by other Federal agencies. Chapters 8–15 of 516 DM continue to contain bureau-specific NEPA implementing procedures. In addition, other guidance pertaining to the Department's NEPA regulations and the bureaus' NEPA procedures will be contained in explanatory and informational directives. These explanatory and information directives will be contained either in the DM or ESM (for Departmental guidance), bureau NEPA handbooks (for bureau-specific guidance), or both.

The CEQ was consulted on the proposed and final rule. CEQ issued a letter stating that CEQ has reviewed this rule and found it to be in conformity with NEPA and CEQ regulations (per 40 CFR 1507.3 and NEPA section 102(2)(B)).

Comments on the Proposal

This rule was published as a proposed rule in the **Federal Register** (73 FR 126) on January 2, 2008, and there was a 60-day comment period that closed on March 3, 2008. The Department received 100 comments. These comments were in the form of letters, e-mails, and faxes. Of the 100 comments received 50 were substantive; the remaining comments were all variations of a single form letter addressing one or more of three issues, which have been addressed below. The Department very much appreciates the response of the public, which has assisted the Department in improving the clarity of this final rule.

In addition to changes made to the final rule in response to specific comments received, which are noted below, the Department has made minor revisions throughout in order to improve the clarity of the rule. In general, these latter revisions do not change the substance or meaning of any of the provisions proposed on January 2, 2008, except in one or two instances as noted. As contemplated in the preamble to the proposed rule, the Department has added a provision specifying the circumstances in which an Environmental Assessment (EA) may tier to an Environmental Impact Statement (EIS) and in which a bureau may reach a Finding of No Significant Impact (FONSI) or Finding of No New Significant Impact (FONNSI). Please see paragraph 46.140(c).

General Comments on the Proposed Rule

Comment: Several commenters questioned the rationale for moving the Department's NEPA procedures from the DM to regulations and requested further clarification of this rationale.

Response: The Department believes that codifying the procedures in regulation will provide greater visibility to that which was previously contained in the DM and highlight opportunities for public engagement and input in the NEPA process. The Department believes that this greater accessibility of the regulations, when published in the Code of Federal Regulations (CFR), will allow

the public to more easily participate in the NEPA process.

Comment: Some commenters stated that the Department should include the issue of global climate change in all environmental analysis documents. They stated that the Department has a legal obligation under NEPA to analyze the effects of global climate change as shaping the context within which proposed actions take place, as well as the impacts of proposed projects on climate change. Another group recommended that the Department include a mandate that an environmental analysis of climate change impacts be included in the NEPA analysis prepared for Resource Management Plans (RMPs). Several groups suggested that the Department should require planning documents for fossil fuel developments to consider various energy alternatives, including conservation and energy efficiency. They also recommended that the Department analyze greenhouse gas emissions in all decision documents related to energy development on public lands. Another commenter suggested that the Department compile information about landscape changes in response to climate change to use for programmatic NEPA documents.

Response: Climate change issues can arise in relation to the consideration of whether there are direct or indirect effects of the greenhouse gas emissions from a proposed action, the cumulative effect of greenhouse gas emissions, and the effect of climate change on the proposed action or alternatives. The extent to which agencies address the effects of climate change on the aspects of the environment affected by the proposed action depends on the specific effects of the proposed action, their nexus with climate change effects on the same aspects of the environment, and their implications for adaptation to the effects of climate change. Whether and to what extent greenhouse gas emissions and/or climate change effects warrant analysis is the type of determination that Responsible Officials make when determining the appropriate scope of the NEPA analysis. Extensive discussion regarding the role of the Department, as well as the Federal government as a whole, with respect to the effects of greenhouse gas emissions and/or global climate change is beyond the scope of this rule concerning environmental analysis generally. Consequently, the final rule does not contain explicit provisions addressing global climate change.

Comment: One commenter stated that the Department should include a provision that agencies must seek input through the NEPA process from local, regional, State, and tribal health agencies when making decisions that may impact human health. Several groups recommend requiring a Health Impact Assessment (which is a tool used by the World Health Organization) when a project may impact human health.

Response: The Department appreciates this suggestion but does not believe inclusion of a specific requirement in this regard is appropriate in this rule. Individual bureaus of the Department have addressed and will continue to address possible impacts to human health in certain circumstances, such as with respect to subsistence issues in Alaska. Whether or not a Health Impact Assessment is the appropriate means to assess potential impacts on human health with regard to a particular proposal is the type of determination that Responsible Officials make for all manner of possible impacts when determining the appropriate scope of the NEPA analysis.

Responses to Comments on Individual Provisions, Including Analysis of Changes Made

The following paragraphs contain responses to comments made on individual provisions of the proposed rule and incorporate discussion of changes made to the rule as proposed in January 2008.

Subpart A: General Information

Section 46.10 Purpose of this Part. A new paragraph (c) has been added to clarify that, in accordance with CEQ regulations at 40 CFR 1500.3, trivial violations of these regulations are not intended to give rise to any independent cause of action.

Section 46.30 Definitions. This section supplements the terms found in the CEQ regulations and adds several new definitions. The terms affected are the following: Adaptive management; Bureau; Community-based training; Controversial; Environmental Statement Memoranda; Environmentally preferable alternative; No action alternative; Proposed action; Reasonably foreseeable future actions; and Responsible Official. A definition of consensus-based management has been placed in section 46.110. The definitions of no action alternative and proposed action have been moved to this section for the final rule from proposed section 46.420, as these terms may apply to both EAs and EISs. Comments and responses addressing these terms may be found below, in the discussion of section 46.420.

Comment: Several commenters expressed concern that the definition of ''community'' may be ''misinterpreted in a variety of ways to mean local and county governments affected by a proposed action, or communities of individuals with a common interest in the project who do not necessarily live in the area directly affected by the project.'' Several groups recommended that the Department include and review the definition(s) in Environmental Statement Memorandum No. ESM03–7.

Response: Because of the possibility of confusion noted by the commenter, the Department has included a provision at section 46.110 focusing on ''consensus-based management'' as incorporating the ideas reflected in the emphasis on community involvement in the NEPA process. In developing the provision addressing consensus-based management, the Department relied upon the existing ESM03–7.

Comment: Many commenters expressed concerns with the proposed definition of ''controversial.'' Some stated that the size or nature of a proposed action should not render the action controversial under NEPA. Several individuals are concerned that the proposed definition of ''controversial'' would render all proposed projects on public lands as being controversial and will protract NEPA analyses. One group applauded the Department for defining ''controversial'' in terms of disputes over the bio-physical effects of a project rather than merely opposition to a project.

Response: The language in the proposed rule reflects current case precedent on the meaning of ''controversial'' under NEPA and has been retained, but with modification to address the confusion regarding the reference to ''size'' and ''nature'' in the final rule. Courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered to be ''controversial'' within the meaning of NEPA, rather than a mere matter of the unpopularity of a proposal. *See Como-Falcon Coalition, Inc.* v. *U.S. Dept. of Labor*, 609 F.2d 342 (8th Cir. 1978), *cert. denied*, 446 U.S. 936 (''Mere opposition to federal project does not make project controversial so as to require environmental impact statement.'')

Comment: Some commenters suggested that the definition of ''environmentally preferable alternatives'' does not make clear whether the requirement applies to Records of Decision (RODs) on projects

analyzed in an EIS or EA or only to those analyzed in an EIS. They recommended adding a sentence at the end of the definition clarifying that the requirement applies to EAs and EISs.

Response: CEQ regulations require the identification of at least one environmentally preferable alternative in a ROD, which is the decision document issued after completion of an EIS. (40 CFR 1505.2(b); *see also* Question 6b of CEQ's ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46 Fed. Reg. 18026 (Mar. 23, 1981), as amended (hereinafter CEQ's ''Forty Most Asked Questions''). The CEQ regulations do not identify the decision document issued after completion of an EA/FONSI, and bureaus do not issue RODs in this situation. Therefore, the Department has not changed the definition in response to this comment.

Comment: Several commenters expressed reservations about the definition of Preliminary Environmental Impact Statement (PEIS). They suggested that the role of the PEIS be clarified. One commenter wanted the Department to include provisions on how the scoping process and the PEIS will interact. Others wanted to know what level of detail should be included in a PEIS and whether use of a PEIS would introduce an additional requirement for public comment. One commenter strongly disagreed with the use of a PEIS, stating that the use of a PEIS could delay a DEIS or FEIS and could add additional expenses to private proponents that are funding NEPA projects. They recommended that the Department add a provision to the rule that would enforce time restrictions on the PEIS process.

Response: Because of the confusion and concern surrounding the PEIS, and upon further reflection, the Department has decided not to include this provision in the final rule. The definition in the proposed rule found at section 46.30 and description in sections 46.415 and 46.420 have been removed in the final rule. The Department continues to encourage collaboration with the public in an approach to alternative development and decision-making. The implementation of any such approach is determined by the RO. The PEIS was simply an optional tool and its removal from the final rule will not diminish this continuing Departmental emphasis on collaboration. The RO will still be free to involve and inform the public regarding each particular NEPA analysis in a manner that best meets the public and government needs.

Comment: One commenter stated that the Department should add ''agency'' to the definition of ''Reasonably Foreseeable Future Actions'' to ensure the agency covers all reasonably foreseeable actions that flow from proposed actions. Several commenters stated that the proposed definition of ''Reasonably Foreseeable Future Actions'' conflicts with the definition of ''Reasonably Foreseeable Development Scenario'' contained in the Instruction Memorandum 2004–089 issued by the BLM. Another commenter stated that the proposed definition of ''Reasonably Foreseeable Future Actions'' does not follow CEQ guidelines.

Response: The final rule defines ''reasonably foreseeable future actions'' to explain a term used in CEQ's definition for ''cumulative impact'' at 40 CFR 1508.7. The Department has attempted to strike a balance by eliminating speculation about activities that are not yet planned, but including those that are reasonably foreseeable and are expected to occur (for example, based on other development in the area when there has been some decision, funding, or development of a proposal (see 40 CFR 1508.23)). The Department does not believe that the definition of ''reasonably foreseeable future actions'' conflicts with the description of the Bureau of Land Management's analytical tool, the ''reasonably foreseeable development scenario'' or RFD. The RFD is a projection (scenario) of oil and gas exploration, development, production, and reclamation activity that may occur in a specific resource area during a specific period of time; as such, the analysis in the RFD can provide basic information about oil and gas activities that may inform the analysis of reasonably foreseeable future actions.

In order to clarify that reasonably foreseeable future actions include both ''federal and non-federal'' activities, we have added these terms in the definition in section 46.30. This is consistent with 40 CFR 1508.7. The Department has added language to clarify that the existing decisions, funding, or proposals are those that have been brought to the attention of the RO.

In its mention of the ''Responsible Official of ordinary prudence'' the definition also incorporates the reasonableness standard emphasized by the Supreme Court as ''inherent in NEPA and its implementing regulations.'' In *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 770 (2004), the Court reaffirmed that this ''rule of reason'' is what ensures that agencies include in the analyses that they prepare information useful in the decision-making process. In that case, the Court noted that the agency in question, the Federal Motor Carrier Safety Administration in the Department of Transportation, properly considered the incremental effects of its own safety rules in the context of the effects of the reasonably foreseeable possibility that the President might lift the moratorium on cross-border operations of Mexican motor carriers. *Id.* In those circumstances, the possibility that the President might act in one of several ways was neither an existing decision, matter of funding, or proposal, but was nevertheless a possibility that a person of ordinary prudence would consider when reaching a decision regarding the proposed action of promulgating the rule at issue in that case. Similarly, in some circumstances an RO of ordinary prudence would include analysis of actions that, while not yet proposed, funded, or the subject of a decision, nevertheless are likely or foreseeable enough to provide important information and context within which any significant incremental effects of the proposed action would be revealed.

Subpart B: Protection and Enhancement of Environmental Quality

The proposed rule did not include portions of 516 DM Chapter 1 that are merely explanatory in that they address internal Departmental processes. This information will be retained in the DM or will be issued as additional explanatory information by the Department's Office of Environmental Policy and Compliance in Environmental Statement Memoranda.

In this final rule, this subpart includes the following sections:

Section 46.100 Federal action subject to the procedural requirements of NEPA. This section provides clarification on when a proposed action is subject to the procedural requirements of NEPA. Paragraph 46.100(b)(4), ''The proposed action is not exempt from the requirements of section 102(2) of NEPA,'' refers to those situations where, either a statute specifically provides that compliance with section 102(2) of NEPA is not required, or where, for instance, a bureau is required by law to take a specific action such that NEPA is not triggered. For example, Public Law 105–167 mandates the Bureau of Land Management (BLM) to exchange certain mineral interests. In this situation, section 102(2) of NEPA would not apply because the law removes BLM's decision making discretion. Also, this provision refers to situations where there is a clear and unavoidable conflict

between NEPA compliance and another statutory authority such that NEPA compliance is not required. For example, if the timing requirements of a more recent statutory authority makes NEPA compliance impossible, NEPA must give way to the more recent statute.

Similarly, the final rule clarifies that the proposed action is subject to the procedural requirements of NEPA and the CEQ regulations depending on ''the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval will be provided to implement it'' paragraph 46.100(a). The criteria for making this determination include, *inter alia*, ''when the bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal'' paragraph 46.100(b)(1), and ''the effects can be meaningfully evaluated'' and ''the proposed action would cause effects on the human environment'' paragraph 46.100(b)(3).

The clarifications provided in this section have been made, in part, in order to ensure that the rule is consistent with the Supreme Court's decision in *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 770 (2004). In *Public Citizen*, the Court explained that a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations, but that there must be ''a reasonably close causal relationship'' between the environmental effect and the alleged cause and that this requirement was analogous to the ''familiar doctrine of proximate cause from tort law.'' 541 U.S. at 767. The Court reaffirmed that ''courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not'' and that inherent in NEPA and its implementing regulations is a ''rule of reason.'' *Id.*

Comment: Some commenters expressed concern regarding the procedural requirements of NEPA. One group stated that the Department's procedural actions should be subject to NEPA requirements regardless of whether or not sufficient funds are available. This group stated that if a proposed action is even being considered by a RO, the procedural requirements of NEPA must apply. Another group suggested the Department add an additional subsection that offers guidance whether an ''action'' is subject to NEPA compliance.

Response: The Department agrees that the procedural requirements of NEPA apply when a proposal consistent with 40 CFR 1508.23 has been developed. Mere consideration of a possible project however does not constitute a proposed action that can be analyzed under NEPA. Rather, under 40 CFR 1508.23, a proposal is ripe for analysis when an agency is ''actively preparing to make a decision.''

When the proposed action involves funding, Federal control over the expenditure of the funds by the recipient is essential to determining what constitutes a ''Federal'' action that requires NEPA compliance. This is consistent with 40 CFR 1508.18(a). The issue of funding does not turn on the sufficiency, or lack thereof, of the funding, but on the degree of Federal control or influence over the use of the funds. The language in the final rule regarding whether a proposal is subject to NEPA compliance has been clarified by addressing the question of whether NEPA applies in paragraph 46.100(a), and when the NEPA analysis should be conducted in paragraph 46.100(b).

Comment: One individual urged the Department to not add additional obligations that are not currently required under NEPA, particularly with respect to the emphasis on public participation.

Response: This final rule adds no additional obligations not currently required under NEPA and the CEQ regulations. Section 46.100 is an effort to consolidate existing requirements in 40 CFR 1508.18, 40 CFR 1508.23, and 40 CFR 1508.25, among others. For instance in 40 CFR 1500.2(d) CEQ requires that Federal agencies ''* * * encourage and facilitate public involvement in decisions which affect the quality of the human environment.'' Consistent with this provision, paragraph 46.305(a) requires that a bureau must, to the extent practicable, provide for public notification and public involvement when an environmental assessment is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the RO. Individual bureaus will be able to provide in their explanatory and informational directives descriptions of ways of carrying out public notification and involvement appropriate to different kinds of proposed actions.

Comment: One commenter stated that the proposed rule as written suggests that a NEPA review would only occur to the extent the effects on the human environment could be meaningfully evaluated and that the proposed provision at 46.100 seemed to ''conflict with situations where there are 'unknowns' and the bureau cannot meaningfully evaluate the effects, but it nonetheless is necessary to move ahead with the proposal.'' This commenter suggested that the Department clarify that NEPA review will proceed and will be based on the best available data.

Response: The Department agrees that NEPA analysis takes place when the effects of a proposed action can be meaningfully evaluated, as stated in the revised paragraph 46.100(b). Further, the Department appreciates the commenter highlighting the possibility of confusion resulting from the structure of 46.100 as proposed. As proposed, section 46.100 addressed both the questions of whether and when a proposed action is subject to the procedural requirements of NEPA, but without grouping the provisions addressing these two issues separately. In response to this comment, and upon further review, the Department has restructured section 46.100 to separate these two issues into paragraphs (a) and (b) for the sake of clarity. The revised paragraph 46.100(b) identifies when in its development the proposed Federal action the NEPA process should be applied and, if meaningful evaluation of effects cannot occur, then the proposal is not yet ripe for analysis under NEPA.

That being said, NEPA itself does not require the use of ''best available data;'' rather, CEQ regulations demand information of ''high quality'' and professional integrity. 40 CFR 1500.1, 1502.24. However, the Department's obligations under other authorities, such as the Information Quality Act Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), do require bureaus to use the best available data. While discussion of the Department's obligations under the Information Quality Act is outside the scope of this rule, the Department concurs that meaningful evaluation must be carried out on the basis of whatever data is available. The Department does not believe that this is inconsistent with CEQ's provision regarding those situations where information is incomplete or unavailable (40 CFR 1502.22). In fact, rather than stating that meaningful evaluation cannot take place when there are ''unknowns'' as the commenter appears to suggest, the CEQ regulations provide steps to take in order that meaningful evaluation can continue when information is lacking; therefore, the Department does not believe

revision of this rule is necessary to address this point.

Comment: Several individuals responded to our request for input regarding the use of FONSIs based on tiered EAs where a FONSI would be, in effect, a finding of no significant impacts other than those already disclosed and analyzed in the EIS to which the EA is tiered. These individuals supported the concept.

Response: The Department appreciates the comment. The Department has added the provision as contemplated. See section 46.140, which provides for the use of tiered documents. See also the detailed response to comments on section 46.140, below. Under this final rule a FONSI or FONNSI (Finding of No New Significant Impact) can be prepared based on an EA that is tiered to an EIS. This approach is consistent with CEQ regulations at 40 CFR 1508.28.

Comment: One group recommended the Department clarify that the National Park Service (NPS) should prepare an EA or EIS as part of its submission to the National Capital Planning Commission.

Response: This comment was specifically referring to situations where a particular type of proposed action may be subject to categorical exclusion (CX or CE) under the Department's NEPA procedures but not under the NEPA procedures of another Federal agency such as, in this case, the NEPA procedures of the National Capital Planning Commission (NCPC). While, as a general rule, each Federal agency is responsible for compliance with NEPA consistent with both CEQ's regulations and its own procedures for implementing NEPA, the particular issue raised concerns a very specific situation involving two Federal agencies acting under very specific and distinct authorities. Therefore, the Department declines to address this comment more specifically and does not believe a specific provision is necessary in general Departmental procedures.

Section 46.105 Using a contractor to prepare environmental documents. This section explains how bureaus may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(c).

Comment: Some commenters wanted the Department to clarify requirements for working with a contractor. Some stated that strict requirements should be put into place for selection of a contractor to ensure the adequacy of documents, independent evaluation, and sound management practices. One individual stated that the Department should adopt existing CEQ guidance on the use and selection of contractors.

Response: The Department complies with CEQ regulations and follows existing CEQ guidance on the selection and use of contractors. Each bureau is responsible for determining how its officials will work with contractors, subject to the CEQ regulations and guidance. In any event, the RO is responsible for, or is the approving official for, the adequacy of the environmental document. The Department does not believe any further clarification of the rule is necessary.

Comment: Another commenter applauded the Department for a ''clear articulation of the use of contractors for NEPA document preparation.''

Response: The Department appreciates the comment.

Section 46.110 Incorporating consensus-based management. This section provides a definition of consensus-based management and incorporates this approach as part of the Department's NEPA processes. Paragraph 46.110(e), requiring bureaus to develop directive to implement section 46.110 has been removed from the final rule as not appropriate for regulatory treatment.

Comment: Most commenters supported the Department's proposed rule on consensus-based management. However, many individuals expressed concerns regarding the breadth of the definition of consensus-based management. Because of the lack of concrete provisions within this section, many individuals suggested the NEPA process could become ''unnecessarily time consuming and costly.'' Several individuals stated that the word ''consensus'' should be taken out of the proposed rule because ''consensus'' suggests interested parties will determine the preferred alternative. Other individuals suggested that the term ''consensus'' has the potential to create ''unreasonable expectations in the public.'' One group suggested replacing ''consensus'' with ''open and transparent community involvement and input.'' Another suggestion for the replacement of the word ''consensus'' was ''collaboration.'' Several individuals stated that the proposal for consensus-based management should be withdrawn and that the Department should continue following the current CEQ regulations on collaboration. Individuals suggested that the Department clearly define what constitutes community.

Response: The Department has revised section 46.110, and added a definition for ''consensus-based management'' to this section. The definition comes from the existing ESM03–7, and expresses existing Department policy. The definition of ''consensus-based management'' has been modified in order to render it in regulatory language. Many of the commenters seem to assume that in the absence of consensus the Department will not take action. This is not the case. While the RO is required to consider the consensus-based management alternative whenever practicable, at all times discretion remains with the RO regarding decisions, if any, to be made with respect to the proposed action. While the Department requires the use of consensus-based management, whenever practicable, we have added a provision that if the RO determines that the consensus-based alternative should not be the preferred alternative, an explanation of the rationale behind this decision is to be incorporated in the environmental document.

Comment: Some commenters stated that the technique of consensus-based management may be impossible to implement. One group was particularly concerned with the definition of ''interested party.'' They believe it may be impossible for the Department to determine who the interested parties are and that the process of managing interested parties may be cumbersome and add expense and time onto NEPA projects. This group suggested that the Department develop a clear and concise definition of ''interested parties.''

Response: The Department acknowledges that consensus may not always be achievable or consistent with the Department's legal obligations or policy decisions. However, the Department requires the use of consensus-based management whenever practicable. CEQ regulations direct agencies to encourage and facilitate public involvement in the NEPA process. 40 CFR 1500.2(d), 40 CFR 1506.6. The Department agrees that use of the term ''interested parties'' may cause confusion. The Department has replaced the term ''interested parties'' with ''those persons or organizations who may be interested or affected'' which is used in the CEQ regulations. See for example 40 CFR 1503.1.

Comment: Several individuals stated that it is vital that the interests of the ''regional community'' be taken into account during the NEPA process. One commenter applauded the Department for including consensus-based management in the proposed rule and for taking additional steps to support the ''cooperative conservation policy.'' One group believed this proposal would ''provide an avenue for impacted local governments and citizens to become

involved in the agency review process, and have their interests acknowledged in a meaningful way, and achieve a win-win final decision.''

Response: The Department appreciates the comment and agrees that the interests of the regional and local community should be taken into account during the NEPA process.

Comment: Several commenters stated that the Department needs to add a provision to the rule that clearly spells out the role of the RO. This provision would include directives on selecting alternatives.

Response: The Department has defined ''Responsible Official'' under section 46.30. The Department has also specified in the definition that the RO is responsible for NEPA compliance (which includes the selection of alternatives). The particular identity of the RO for any given proposed action is determined by the relevant statute, regulation, DM, or specific delegation document that grants the authority for that particular action.

Comment: Some individuals also stated that a process should be included to assure the public that the community's work is reflected in the evaluation of the proposed action and the final decision, even if the community alternative is not eventually selected as the agency's preferred alternative. One group suggested that the Department define what constitutes ''assurance'' that participant work is considered in the decision-making process. Several groups stated that the community alternative must fully comply with NEPA, CEQ regulations, and all Department policies and procedures in order to be considered by the RO. Several groups refer to court cases stating that NEPA ''does not require agencies to consider alternatives that are not feasible or practical.'' Individuals would like the Department to explain what a community alternative consists of, how it will be evaluated, who is the relevant community, and how many community alternatives can be proposed for each project. They also expressed concern that the proposed rule suggests all alternatives submitted must be analyzed in detail.

Response: Section 46.110 provides for the evaluation of reasonable alternatives presented by persons, organizations or communities who may be interested or affected by a proposed action in the NEPA document even if the RO does not select that alternative for implementation. The final rule clarifies that, while all or a reasonable number of examples covering the full spectrum of reasonable alternatives may be considered, a consensus-based management alternative (if there are any presented) may only be selected if it is fully consistent with the purpose of and need for the proposed action, as well as with NEPA generally, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance could be selected. It also provides that bureaus must be able to show that participants' or community's input is reflected in the evaluation of the proposed action and the final decision. Therefore, the Department believes that the final rule adequately addresses these comments.

Comment: Some individuals indicated that NEPA does not require consensus and stated the proposed rule goes against the direction of the CEQ regulations. Some commenters directed the Department to review CEQ's ''Collaboration in NEPA'' handbook. Several groups recommended that the Department include and review the Environmental Statement Memorandum No. ESM03–7.

Response: The Department agrees neither NEPA nor the CEQ regulations require consensus. This new regulation requires the use of consensus-based management whenever practicable. Consensus-based management is not inconsistent with the intent of NEPA and the CEQ regulations. The Department has reviewed CEQ's publication ''Collaboration in NEPA—*A Handbook for NEPA Practitioners*'' available at *http://ceq.eh.doe.gov/nepa/nepapubs/Collaboration_in_NEPA_Oct2007.pdf*. While consensus-based management, like collaboration, can be a useful tool, the Department recognizes that consensus-based management may not be appropriate in every case. The final rule does not set consensus-based management requirements, including timelines or documentation of when parties become involved in the process. Similar to collaborative processes, consensus-based management processes, like public involvement and scoping, will vary depending on the circumstances surrounding a particular proposed action. Some situations will require a lot of time and others will not. Regardless of the level or kind of public involvement that takes place, at all times the RO remains the decision maker.

Comment: One group suggested that the Department remove paragraph (b) because it is ''duplicative, ambiguous, and unnecessary.'' They believed this section simply restates the requirement in section 1502.14 of the CEQ regulations that requires agencies evaluate ''all reasonable alternatives.'' They also expressed concern that community-based alternatives may be given preferential weight over the project proponent's alternative.

Response: The Department does not agree that the section is unnecessary and duplicative or that it simply restates the requirement in section 1502.14 of the CEQ regulations. Although there are some common elements to 40 CFR 1502.14 and paragraph 46.110(b), this paragraph requires the use of consensus-based management in NEPA processes and decision-making whenever practicable. The RO is responsible for an analysis of the reasonable alternatives, and the NEPA process allows for the selection of an alternative based on the consideration of environmental effects, as well as the discretionary evaluation of the RO. The intent of this provision is that alternatives presented by those persons or organizations that may be interested or affected, including applicants, be given consideration.

Comment: One group wanted to see a mandate added to the proposed rule that requires the Department to work with tribal governments. One individual suggested that the word ''considered'' should be changed to ''adopted,'' ''accepted,'' or ''implemented'' to ensure consideration is given to an alternative proposed by a tribe.

Response: The Department has a government-to-government relationship with federally-recognized tribes and as such specifically provides for consultation, coordination and cooperation. We consider all alternatives, including those proposed by the tribes, as part of the NEPA process, but cannot adopt, accept, or implement any alternative before full evaluation of all reasonable alternatives. Therefore, the Department declines to adopt the group's recommendation.

Section 46.113 Scope of the analysis. This section, as proposed, addressed the relationships between connected, cumulative, and similar actions and direct, indirect and cumulative impacts. This section has been removed from the final rule.

Comment: Some commenters stated that the proposed rule is not clear with respect to the issue of what projects need to be included in the scope of analysis. One individual suggested that the Department should include language in the proposed rule clarifying that the effects of connected, cumulative and similar actions must be included in the effects analysis as indirect or cumulative effects. These actions do not become part of the proposed action, and alternatives for these actions need not be considered in the analysis.

One individual suggests that the Department change the language to provide guidance that allows bureaus to determine which projects need to be included in a cumulative effects analysis. They recommend clearly defining ''connected,'' ''cumulative,'' ''direct,'' and ''indirect.'' If these changes are made, some believe this rule will provide uniformity, consistency, and predictability to the NEPA process.

Another individual suggested ''should'' be removed from this section. They expressed concern that the current wording implies that connected and cumulative action analysis is optional.

One commenter recommended that this section should be deleted in its entirety because it is inconsistent with CEQ regulations. They recommended that the Department revise the section to reflect the difference between the treatment of connected, cumulative, and similar actions and the treatment of the effects of such actions.

Response: In light of the confusion reflected in several of the comments, as well as upon further consideration, the Department has eliminated this provision from the final rule. Bureaus will continue to follow CEQ regulations regarding scope of analysis at 40 CFR 1508.25, as well as bureau specific directives.

Section 46.115 Consideration of past actions in the analysis of cumulative effects. This section incorporates CEQ guidance issued on June 24, 2005 that clarifies how past actions should be considered in a cumulative effects analysis. The Department has elected not to repeat the specific provisions of the CEQ guidance in the final rule. Responsible Officials are directed to refer to the applicable CEQ regulations and the June 24, 2005 CEQ guidance.

Comment: Several groups commended the Department for its efforts to bring clarity to the NEPA cumulative effects analysis.

Response: The Department appreciates the comments.

Comment: Several groups stated that CEQ regulations do not contain a ''significant cause-and-effect'' filter excluding projects from cumulative impact analysis because the project's effects are minor. One group was concerned that the proposed rule contains measures that would ''constrain the usefulness of agencies' analyses of cumulative impacts,'' and would violate CEQ regulations. This group suggested that the proposed rule would constrain the scope of actions whose effects should be considered in a cumulative impacts analysis.

Some individuals stated that the Department is proposing to curtail the consideration and evaluation of past actions when proposing future activities. They stated that the agencies and public should be informed of potential environmental consequences before decisions are made. Others suggested this section does not provide guidance to the RO on what past actions and proposed future actions should be included in the analysis. Groups stated that a Department field office has no inherent expertise in determining which actions are relevant to a cumulative impacts analysis and should therefore not be vested with such discretion. Several groups suggested that the entire section should be removed from the proposed rule, and that the Department should conduct environmental analyses pursuant to CEQ regulations. One individual stated ''NEPA is intended to ensure that bureaus make sound decisions informed by the ''cumulative and incremental environmental impacts'' of the proposed projects and how those impacts will actually affect the environment.'' Several groups stated that vague language for past actions to be included in cumulative impact analysis will result in more confusion and litigation.

Response: At section 46.115, this final rule incorporates guidance on the analysis of past actions from the June 24, 2005 CEQ *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis,* which may be found at *http://ceq.eh.doe.gov/nepa/regs/Guidance_on_CE.pdf.* This section is consistent with existing CEQ regulations, which use the terms ''effects'' and ''impacts'' synonymously and define cumulative impact as ''the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions'' (40 CFR 1508.7).

The focus of the CEQ guidance incorporated in this final rule is on the consideration of useful and relevant information related to past actions when determining the cumulative effects of proposals and alternatives. Bureaus will conduct cumulative effects analyses necessary to inform decision-making and disclose environmental effects in compliance with NEPA. A ''significant cause-and-effect'' filter is specifically provided for in the CEQ guidance.

To clarify the Department's commitment to follow CEQ guidance concerning consideration of past actions, the final rule at section 46.115 is revised to state, ''When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with 40 CFR 1508.7 and in accordance with relevant guidance issued by the Council on Environmental Quality, such as 'The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis' dated June 24, 2005, or any superseding Council on Environmental Quality guidance.'' The Department believes that by incorporating CEQ's guidance we have included sufficient specificity in the rule; any other ''how to'' information may be provided through the Departmental chapters in the DM, environmental statement memoranda series, or bureau-specific explanatory and informational directives.

Comment: Groups expressed concern over the definition of ''reasonably foreseeable future actions'' and suggested this definition should be removed from the final proposal. They understood that the Department cannot conduct a ''crystal ball'' analysis but that actions should be considered in the analysis even if decisions and funding for specific future proposals does not exist.

Response: The Department agrees. In response, the Department has added specificity and provided guidance on what should be considered a reasonably foreseeable future action in order to ensure that speculative activities or actions are not incorporated into the analysis while actions that may inform the RO's analysis of cumulative impacts for the proposed action are included, even if they are not yet funded, proposed, or the subject of a decision identified by the bureau. This approach is consistent with CEQ regulations.

Section 46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations. This section explains how to incorporate existing environmental analysis previously prepared pursuant to NEPA and the CEQ regulations into the analysis being prepared.

Comment: Several individuals agreed that using existing documentation will reduce lengthy analysis and duplication of work and applaud the Department for including this section in the proposed rule. However, commenters would like a provision added to the section to ensure the supporting documentation is provided to the public online and in the bureau's office.

Response: The Department agrees that any information relied upon in a NEPA analysis should be publicly available, either independently or in connection with the specific proposed action at

issue, and has so stated in section 46.135.

Section 46.125 Incomplete or unavailable information. CEQ regulations at 40 CFR 1502.22 provide ''When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking'' and sets out steps that agencies must follow in these circumstances. This section clarifies that the overall costs of obtaining information referred to in 40 CFR 1502.22 are not limited to the estimated monetary cost of obtaining information unavailable at the time of the EIS, but can include other costs such as social costs that are more difficult to monetize. Specifically, the Department requested comments on whether to provide guidance on how to incorporate non-monetized social costs into its determination of whether the costs of incomplete or unavailable information are exorbitant. The Department also requested comments on what non-monetized social costs might be appropriate to include in this determination; *e.g.,* social-economic and environmental (including biological) costs of delay in fire risk assessments for high risk fire-prone areas.

Comment: Many commenters expressed concern with the incomplete or unavailable information section. They stated that the rule does not provide guidance to bureaus on how to address ''non-monetized social costs.'' Some individuals stated that critical information is missing from this section, such as an exclusive list of non-monetized social costs. Several groups suggested the Department expand on CEQ regulation section 1502.22 which addresses agency procedure in the face of incomplete or unavailable information. Groups stated that the Department should ''direct its bureaus to specifically evaluate the risks of proceeding without relevant information, including risks to sensitive resources.'' Some suggested the Department provide their findings to the public so the public can provide meaningful comment and scrutiny. They stated that this approach would be more consistent with case law and with CEQ regulations. Groups stated that if the section remains ''as is,'' the Department has provided ''the bureaus with an incentive to cease collecting information and providing it to the public.'' One group stated that the proposed rule encourages agencies to find reasons not to obtain information that they have already acknowledged is relevant to reasonably foreseeable significant impacts and that this message is contrary to NEPA and CEQ regulations. Several other commenters noted that the proposed rule provides clarity in assessing the monetary costs of gathering information and is consistent with CEQ regulations.

Response: The Department believes that section 46.125 provides guidance sufficient to implement 40 CFR 1502.22 in so far as CEQ's regulation addresses this issue of costs. The Department has added some language in response to comments regarding what sorts of considerations constitute ''non-monetized social costs.'' However, the Department believes that other factors that may need to be weighed include the risk of undesirable outcomes in circumstances where information is insufficient or incomplete. Paragraph 1502.22(b) specifically provides for the steps the Department will take if the overall cost of obtaining the data is exorbitant or the means to obtain the data are not known.

Comment: One commenter suggested that the Department must ''utiliz[e] public comment and the best available scientific information'' and recommended including a provision to this effect in the final rule.

Response: There is no question that public involvement is an integral part of the NEPA process and can take a variety of forms, depending on the nature of the proposed action and the environmental document being prepared; therefore the final rule includes several provisions addressing public involvement. There is, however, some level of confusion regarding the data standard applicable to the type of information NEPA requires. The assertion is frequently made in court cases, as the commenter suggests here, that NEPA analyses must use the ''best available science'' to support their conclusions. In fact, the ''best available science'' standard comes from section 7 of the Endangered Species Act, specifically 16 U.S.C. 1536(a)(2), which requires that ''each agency shall use the best scientific and commercial data available'' when evaluating a proposed action's impact on an endangered species. In addition, the ''best available science'' standard is used by the United States Department of Agriculture Forest Service's regulations implementing the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* (see Final Rule and Record of Decision, National Forest System Land Management Planning Part III, 73 Fed. Reg. 21468 (Apr. 21, 2008) (to be codified at 36 CFR Part 219)). NEPA imposes a different standard: rather than insisting on the best scientific information available, CEQ regulations demand information of ''high quality'' and professional integrity. 40 CFR 1500.1, 1502.24. Therefore, the Department declines to accept the commenter's recommendation.

Section 46.130 Mitigation measures in analyses. This section has been clarified from the proposed rule. The revision clarifies how mitigation measures and environmental best management practices are to be incorporated into and analyzed as part of the proposed action and its alternatives.

Comment: Most individuals stated that the Department should address mitigation measures in the proposed rule. These individuals explained that, in order to provide interested parties an accurate portrayal of potential effects, it is necessary to include all mitigation measures in the impacts analysis. Several individuals indicate the language in the proposed rule is broad and unclear. Several groups opposed the proposed rule in its current form and suggested that the Department should revise and narrow the rule to ''clarify that possible mitigation measures are discussed in NEPA documents in order to help inform an agency's decision, but reflect the well-settled legal principle that the agency need not guarantee that particular mitigation measures be implemented or that such mitigation measures be successful.'' One group suggested that the Department revise the proposed rule to clarify that NEPA does not require agencies to adopt particular mitigation measures or to guarantee the success of the mitigation plans. One group stated that avoiding significant environmental effects should be the primary goal in the development of any proposed action and mitigation should be a final course of action when all other attempts to avoid impacts have been exhausted.

Response: The Department agrees with the comments about the importance of mitigation; the provision addressing mitigation is carried forward into this final rule. The Department has, however, refined the language of the provision for clarity. The Department agrees that NEPA does not require bureaus to adopt particular mitigation measures and that it is not possible to guarantee the success of mitigation plans, but does not believe revision to the final rule reflecting this understanding is necessary.

Comment: One group argued that including mitigation measures in the effects analysis is crucial to demonstrate that potential effects can be mitigated through the use of stipulations,

conditions of approval, and best management practices. They did not believe it necessary to ''strip'' mitigation measures or best management practices from an applicant's proposal just for the sake of analyzing the stripped down version.

Response: It was not the Department's intent that applicants' proposals be stripped of all best management practices or mitigation measures. The Department has included language to clarify this point. Independent of NEPA, any application must provide a proposal that includes any ameliorative design elements (for example, stipulations, conditions, or best management practices) required to make that proposal conform to legal requirements. In addition, the applicant's proposal presented to the bureau for decision-making will include any voluntary ameliorative design element(s) that are part of the applicant's proposal. Therefore, the analysis of the applicant's proposal, as an alternative, includes, and does not strip out, these elements. Should the bureau wish to consider and/or require any additional mitigation measures other than the design elements included in the applicant's proposal, the effects of such mitigation measures must also be analyzed. This analysis can be structured as a matter of consideration of alternatives to approving the applicant's proposal or as separate mitigation measures to be imposed on any alternative selected for implementation.

Section 46.135 Incorporation of referenced documents into NEPA analysis. This section establishes procedures for incorporating referenced documents as provided for in the CEQ regulations at 40 CFR 1502.21.

No comments were received on this section, but clarifying changes have been made in this final rule.

Section 46.140 Using tiered documents. This section clarifies the use of tiering. As contemplated in the preamble to the rule, and in response to favorable comments, the Department has added a new subsection clarifying that an environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. The finding of no significant impact, in such circumstances, would be, in effect, a finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered. The finding of no significant impact in these circumstances may also be called a ''finding of no *new* significant impact.'' In addition, the provision requiring bureaus to review existing directives addressing tiering, and listing topics that must be included in such directives has been removed from the final rule as not appropriate for regulatory treatment. The numbering of the subsections has been adjusted accordingly.

Comment: One group supported using existing analyses to avoid duplication of effort and to minimize costs. However, they stated that the Department should clearly indicate that existing data does not need to be supplemented with new data if there is no evidence that the current conditions differ from the conditions in which the existing data was developed.

Response: The Department concurs with the comment, but believes that it has been addressed in paragraph 46.140(a). As contemplated in the preamble to the rule, and in response to favorable comments, the Department has added a new paragraph 46.140(c).

Section 46.145 Using adaptive management. This section incorporates adaptive management as part of the NEPA planning process.

Comment: Most commenters supported the concept of adaptive management. However, they stated that the Department has not clearly explained how adaptive management will be incorporated into the NEPA process. One individual believed adaptive management could be a useful tool in allowing ''mid-course corrections'' without requiring new or supplemental NEPA review. Several groups suggest that the Department clarify that adaptive management is only appropriate where risk of failure will not cause harm to sensitive resources. Also, they stated that a requirement for a sufficient inventory of current conditions of affected resources should be included in the adaptive management plan. A detailed monitoring plan should be developed with specific indicators that will serve to define the limits of acceptable change. They also requested a ''fallback'' plan, which would be implemented if adaptive management, monitoring, or funding is not available. Several commenters suggested the Department include sufficient detail and commitments as to how impacts will be measured, avoided, and mitigated. They urged the Department to make this plan available for public comment. Another group suggested that the Department clearly delineate the scope, duration, and availability of funding for any planned monitoring programs before they are implemented. One individual suggested that the Department include additional detail that will clarify how and when it is appropriate to evaluate the effects of adaptive management in subsequent NEPA analysis. Another commenter suggests the Department develop a manual to demonstrate to managers circumstances where adaptive management has worked on-the-ground.

Many groups were concerned that adaptive management is a costly practice and will result in accruing additional costs for project proponents. One group was concerned that lack of information may be used to excuse and allow actions to proceed without sufficient protective measures in place. Some commenters expressed concern that it would be impossible to adequately analyze impacts of adaptive management ''since those actions rely on future conditions that could be complicated and cumulative.'' Modifications to requirements and conclusions in decision documents must be allowed to ensure appropriate adjustments to management actions, according to one group. One commenter was concerned that the Department may misuse adaptive management with regard to on-the-ground monitoring due to lack of funding. Another group suggested the project proponent should play a role in defining the adaptive management strategy and ensuring funding will be available. They also suggested the Department clarify that public involvement is welcome but adaptive management strategies and implementation are the full responsibility of the agency.

Groups questioned adaptive management's consistency with current case law, NEPA, and CEQ regulations. Several commenters suggested that this section should be eliminated due to its inconsistencies with NEPA and CEQ. Due to lack of CEQ framework and no guidance for implementation, one group suggested that the Department should remove this section from the proposed rule.

Response: The Department has made minor wording changes to this section. Adaptive Management (AM) is an approach to management; however, it can be integrated with the NEPA process. The establishment of specific provisions with respect to the use of AM

is beyond the scope of this rule. The intent of this provision is only to clarify that the use of an AM approach is not inconsistent with NEPA. That is, proposed actions must be analyzed under NEPA. Each proposed action, including possible changes in management resulting from an AM approach, may be analyzed at the outset of the process, or these changes in management may be analyzed when actually implemented.

Section 46.150 Emergency responses. This section clarifies that ROs, in response to the immediate effects of emergencies, can take immediate actions necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or this rule. Furthermore, ROs can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or this rule by consulting with the Department (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements.

Comment: Some commenters expressed concern regarding the broad definitions provided in the emergency response section. They stated the section is ''written too broadly and could potentially lead to the misuse of the provision that would allow a bureau to bypass the preparation of an environmental document.'' One group objected to the lack of specificity in terms provided in this section, such as ''emergency,'' ''emergency actions,'' ''immediate impact,'' and ''important resources,'' leaves uncertainty as to how this provision may be implemented by the Department.

Response: There is no special meaning intended for the term ''emergency'' beyond its common usage as ''an unforeseen combination of circumstances or the resulting state that calls for immediate action'' (*Webster's Third New International Dictionary Of The English Language* 1961 and *Merriam-Webster's Collegiate Dictionary* (11th ed. 2004)); ''a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action'' (*Random House Dictionary Of The English Language* (2ed. 1987)); ''a state of things unexpectedly arising, and urgently demanding immediate action'' (*The Oxford English Dictionary 2ed. 1991*) and ''[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures * * *'' (*Black's Law Dictionary 260, 562* (8th ed. 2004)). The proposed regulation, as revised in this final rule, recognizes that responsible officials can take immediate actions to control the immediate impacts of an emergency to mitigate harm to life, property, or important natural or cultural resources.

The final rule, at section 46.150, replaces ''other important resources'' with ''important natural, cultural, or historic resources'' to more clearly identify the type of resources impacted by the emergency. The Department has not defined an emergency because it is impossible to list all circumstances that constitute an emergency; it is up to the RO to decide what constitutes an emergency.

Only such actions required to address the ''immediate impacts of the emergency that are urgently required to mitigate harm to life, property, or important natural, cultural, or historic resources'' may be taken without regard to the procedural requirements of NEPA or the CEQ regulations. Thus, there are no NEPA documentation requirements for these types of situations and the final rule requires NEPA to apply to any and all subsequent proposed actions that address the underlying emergency (paragraphs 46.150 (c) and (d)). The provisions of section 46.150 codify the existing Department practice and CEQ guidance for emergency actions.

Comment: Another group suggested that the Department add a sentence that states ''the RO shall document in writing the action taken, any mitigation, and how the action meets the requirements of this paragraph.'' Several commenters stated that this section does not comply with Congress' mandate to comply with NEPA and CEQ regulations. Several groups believed the proposed rule would allow a bureau to implement any action at any time and avoid the NEPA planning process. Others stated that the ''important resources'' clause should be removed from this section. Several commenters were concerned that the Department is implementing emergency response in order to preclude analysis of fire suppression activities.

Response: The Department agrees that the RO should document the determination of an emergency and have modified the final rule to require this. The Department will continue to act to protect lives, property, and important natural, cultural, or historic resources through means including the use of fire suppression. The Department notes that fire suppression alternatives are addressed in plans that are subject to NEPA analysis.

Section 46.155 Consultation, coordination, and cooperation with other agencies. This section describes the use of procedures to consult, coordinate, and cooperate with relevant State, local, and tribal governments, other bureaus, and Federal agencies concerning the environmental effects of Department plans, programs, and activities. The Department deleted the reference to organizations since this section will deal only with Federal, State, and tribal governmental entities. Material related to consensus-based management has been moved to section 46.110 in order to consolidate all provisions related to consensus-based management. Paragraph 46.155(b), directing bureaus to develop procedures to implement this section, has been deleted as not appropriate for regulatory treatment.

Comment: Many commenters supported this section and stated collaboration would benefit all interested parties.

Response: The Department appreciates the comments.

Comment: Some individuals pointed out that consensus is often unachievable and unnecessary. One group stated that the Department should put federal project reviews into a consensus building process to ensure that opinions and experience are captured in the NEPA process.

Response: Please see our response above to comments on section 46.110.

Comment: Many groups suggested the Department require bureaus to work with cooperating agencies, such as the U.S. Fish and Wildlife Service. One commenter indicated that the Department should ensure that enhanced involvement does not add unnecessary cost or burden to project proponents. They also stated that ''memorializing cooperative conservation in regulations, rather than policy guidance, will result in unnecessary burdens and litigation.''

Response: The Department requires that the RO of the lead bureau consider any request by an eligible government entity to participate in a particular EIS as a cooperating agency. The Department recognizes that an emphasis on the use of cooperating agencies may result in additional steps in the NEPA process, but is likely to lead to improved cooperative conservation and enhanced decision making. Executive Order 13352 on Facilitation of Cooperative Conservation requires all federal agencies to implement cooperative conservation in their programs and activities. Cooperative conservation is consistent with the CEQ requirement that agencies should

encourage and facilitate public involvement in the NEPA process. See 40 CFR 1500.2(d), 1506.6.

Comment: Several tribes expressed concern that the proposed rule will negate the government-to-government consultation with tribes. The tribes believed that the Department should include a provision to ensure Indian tribes are given the opportunity to fully participate in the NEPA process and address concerns that are unique to each action.

Response: See our response above with respect to government-to-government consultation under section 46.110.

Section 46.160 Limitations on actions during the NEPA analysis process. This section incorporates guidance to aid in fulfilling the requirements of 40 CFR 1506.1.

Comment: Several individuals agreed with the proposed rule and believe there is legal authority to support this section. One individual suggested that the Department should address actions that can be taken while a ''project'' is underway, specifically ''actions taken by a private project applicant that are outside the jurisdiction of the bureau are not an irreversible or irretrievable commitment of agency resources.'' They suggested the Department add a provision to this section to clarify the Department's commitment to projects. Although the direction is clear in the provision, one group stated bureau field offices are not adhering to this policy and that an additional provision should be added to this section regarding the use of existing NEPA documents for major federal actions. Another group wanted the Department to add an additional sentence clarifying that a particular action must be justified independently of the program and will not prejudice the ultimate decision of the proposed program.

Response: The Department appreciates the support expressed for this provision. The Department believes that this provision is clear and consistent with 40 CFR 1506.1 and does not believe any additional statement to this effect need be added to the final rule. The requested addition is not required because the provision here at section 46.160 only addresses situations where the major Federal action is within the scope of and analyzed in an existing NEPA document supporting the current plan or program. With respect to current practice within the Department, as explained in the preamble to the proposed rule, see 73 FR 126 (Jan. 2, 2008), the Department believes that one of the benefits of establishing this final rule is greater transparency in the NEPA process. Such transparency is likely to improve consistency of implementation across the Department, as well.

Section 46.165 Ensuring public involvement. This section has been removed from the final rule. CEQ regulations include requirements for public involvement in the preparation of an EIS. Section 46.305 of this final rule addresses public involvement in the EA process. The requirement in paragraph 46.305(a), that the bureau must, to the extent practicable, provide for public notification and public involvement when an EA is being prepared, includes an element of timeliness. The RO has the discretion to choose method(s) of public notification and public involvement that ensure that, if practicable, the public receives timely information on the proposed action.

Comment: One commenter stated that this provision does not provide clarity in the role of public participation. They suggested the Department add additional language to explain the timing, processes and opportunities this provision will provide.

Response: CEQ regulations implementing NEPA direct agencies to encourage and facilitate public involvement in the NEPA process ''to the fullest extent possible.'' 40 CFR 1500.2(d); see also 40 CFR 1506.6. Bureaus conduct a wide variety of actions under various conditions and circumstances. Therefore, the Department has determined that the best approach is for individual bureaus to provide direction as to how ROs should exercise their discretion in ensuring that this involvement takes place in a manner practicable in the particular circumstances of each proposed action, but that it is not appropriate to provide specifics as to how this should occur in this final rule. The Department has provided some information regarding public involvement in ESM 03–4 and may address this topic in future ESMs.

Section 46.170 Environmental effects abroad of major Federal actions. This section describes procedures the bureaus must follow in implementing EO 12114, which ''represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.''

No comments were received on this provision.

Subpart C: Initiating the NEPA Process

In the conversion from 516 DM 2 to 43 CFR Part 46, Subpart C, we have restructured the Department's requirements for initiating the NEPA process. We have put into regulations the essential parts of the NEPA process that are unique to the Department and which require further clarification of the CEQ regulations. This rule clarifies the requirements for applying NEPA early, using categorical exclusions (CEs), designating lead agencies, determining eligible cooperating agencies, implementing the Department's scoping process, and adhering to time limits for the NEPA process.

Section 46.200 Applying NEPA early. This section emphasizes early consultation and coordination with Federal, State, local, and tribal entities and with those persons or organizations who may be interested or affected whenever practical and feasible. A new paragraph 46.200(e) has been added to clarify that bureaus must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals. Any cost estimates provided to applicants are not binding upon the bureau. This provision had already been included with respect to the preparation of EISs, but should also have been included with respect to EAs. Therefore, the provision has been moved from 46.400 (EISs) to 46.200.

Comment: Some commenters supported this section of the proposed rule as it is currently written.

Response: The Department appreciates the comments.

Comment: Some commenters stated that the proposed rule is not clear with respect to how community-based training will be conducted and what the content of the training will include. These commenters suggested the proposed rule should provide a detailed discussion of the purpose of such training, as well as when it is warranted.

Response: The Department has determined that this topic is most appropriately addressed in the environmental statement memoranda. Community-based training, including the content of the training, is included in ESM03–7 and, if appropriate, will be expanded in future ESMs or bureau-specific explanatory and informational directives. No change to the proposed rule has been made.

Comment: Some commenters also recommended that the proposed rule should clarify that it does not expand the amount of information required for applications under the relevant substantive statute.

Response: The final rule does not expand the amount of information required beyond what is required by NEPA and CEQ regulations, which may be more than the information required for applications under the relevant substantive statute. This provision simply provides that the bureaus be forthcoming with descriptions of information that the applicant may need.

Comment: A few commenters stated that public involvement should be limited to submitting comments on the scoping notice, attending public meetings, and submitting comments on the final version of draft NEPA documents. Various commenters suggest that the proposed rule require early consultation with applicants. Others proposed additional changes to the proposed rule to further facilitate early coordination between the Department and applicants. These commenters recommended that the proposed rule distinguish between public involvement in the EA process and the EIS process.

Response: As noted above, CEQ regulations implementing NEPA direct agencies to encourage and facilitate public involvement in the NEPA process ''to the fullest extent possible.'' 40 CFR 1500.2(d); see also 40 CFR 1506.6. The Department is encouraging enhanced public involvement and broad-based environmental coordination early in the NEPA process. The purpose is to facilitate better outcomes by encouraging dialogue among the affected parties. Public involvement is encouraged during the EA and EIS process. CEQ regulations prescribe the manner in which the minimum level of public involvement must be carried out under the EIS process; the manner of conducting public involvement in the EA process is left to the discretion of RO.

Section 46.205 Actions categorically excluded from further NEPA review. This section provides Department-specific guidance on the use of categorical exclusions.

Comment: Many commenters supported this section of the proposed rule as it is currently written. These commenters supported the position that NEPA does not ''apply to statutorily created categorical exclusions,'' such as those created by Congress in 2005.

Response: The Department concurs that legislation governs the application of statutory categorical exclusions. For example, the Energy Policy Act of 2005 (EPAct) establishes how NEPA applies with respect to these categorical exclusions.

Comment: Several groups suggested that the Department ''ensure that its bureaus involve the public in the development and application of CEs and clearly state that extraordinary circumstances need to be provided for unless Congress specifically exempts an agency from doing so.'' These groups maintained that CE disagreements could be reduced through greater transparency in their application. Some of these comments recommended the deletion of paragraph 46.205(d) from the proposed rule. Overall, commenters generally believed it is important to articulate the extraordinary circumstance under which a CE will not apply.

Response: As noted above, CEQ regulations include specific requirements for the establishment of procedures, including CEs, for implementing NEPA. When established as part of the DM, the categories listed in the final rule and the extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3, by publication in the **Federal Register**, March 8, 2004 (69 FR 10866). The final CEs, as originally published in the DM, and as presented in this final rule, were developed based on a consideration of those comments. The Department has provided for extraordinary circumstances in the application of its CEs. Each bureau has a process whereby proposed actions are evaluated for whether particular CEs are applicable including whether extraordinary circumstances exist. As noted above, part of the Department's intent in publishing its NEPA procedures as regulations is to increase transparency in their implementation.

By moving its NEPA procedures, including CEs and the listing of extraordinary circumstances from the DM to regulations, the Department does not intend to alter the substance of these CEs or extraordinary circumstances. In paragraph 46.205(d) the Department is merely acknowledging the fact that Congress may establish CEs by legislation, in which case the terms of the legislation determine how to apply those CEs.

Section 46.210 Listing of Departmental Categorical Exclusions. This section includes a listing of the Department's CEs (currently 516 DM Chapter 2, Appendix B–1). The CEs are in paragraphs (a) through (l). These CEs were all published for public comment prior to inclusion in the DM. This section includes the same number of CEs as were in the DM and the wording in the CEs is unchanged, with five exceptions. Four of those changes are made between the rule as proposed and final because of minor editorial changes from how the categorical exclusions appeared in the DM.

First, § 46.210(b) has been revised from ''Internal organizational changes and facility and office reductions and closings'' as it appeared in the DM to ''Internal organizational changes and facility and bureau reductions and closings'' to conform to the definition of ''bureau'' in the final rule, at § 46.30, which includes ''office.'' The DM had not provided a definition of ''bureau'' and so used both ''bureau'' and ''office.'' Second, the word ''development'' was inadvertently added, so that the parenthetical in the proposed rule at § 46.210(c) read ''(*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable development or green procurement).'' This change has been deleted from this final rule.

Third, the numbering system has been changed in the CE § 46.210(k) from the DM, originally published as final on June 5, 2003 (68 FR 33814), in order to more clearly set out the requirements for use of the CE for hazardous fuels reduction activities. The meaning of the CE has not changed. And fourth, in paragraphs 46.210(k) and (l), the citations to the ESM series, which appeared in parentheticals in the DM, but as footnotes in the Notice published on March 8, 2004 (69 FR 10866), have been placed in the text itself for ease of reference.

Finally, paragraph 46.210(i), which replaces 516 DM Chapter 2, Appendix B–1, Number 1.10, has been changed to correct an error during the finalization of the revision to these DM chapters in 2004. Prior to 1984, and up until 2004, this CE, as established and employed by the Department, covered ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' 49 FR 21437 (May 21, 1984); 516 DM 2, Appendix 1 (June 30, 2003) (Archived versions of 516 DM chapters, including the 1984, 2003, and 2004 versions of 516 DM 2, may be accessed at *http://elips.doi.gov/app_dm/index.cfm?fuseaction=ShowArchive*). No problems with the use of the CE were brought to the attention of the Department during this period. It is the version of the CE that was in place prior to 2004 that was proposed in the Department's January 2, 2008 Notice of Proposed Rulemaking (73 FR 126, 130), and is announced as final in the rule published today.

From 2004, however, a slightly different version of the CE appeared in the DM chapters. In 2000, the Department proposed revisions to 516 DM, including 516 DM 2. 65 FR 52212, 52215 (Aug. 28, 2000). No change was proposed to this CE at that time, and no comments were received regarding this CE. No further action was taken on the 2000 proposal until 2003, when the Department again published the proposed revision to the 516 DM chapters at issue; however, as proposed this revision included an erroneous change to this CE. 68 FR 52595 (Sept. 4, 2003). No comments were received regarding this CE in response to the 2003 Notice. As a result, although no change had been intended, the following version was published as final in 2004 (69 FR 10866, 10877–78 (Mar. 8, 2004)), and incorporated into 516 DM 2, Appendix 1.10: ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.''

As noted in the preamble to the proposed rule, published January 2, 2008 (73 FR 126, 130), the Department is correcting an unintended drafting error in the 2004 Rule. The text which previously described two categories of policies, directives, regulations and guidelines (''* * * that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process * * *''), was replaced with a more restrictive category of policies, directives, regulations and guidelines (''* * * that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process * * *''). During the Departmental review beginning in 2006, in preparation for this rulemaking, the Department discovered the drafting error that infected both the 2003 proposal and the 2004 final revision to the DM. This error has made it difficult to use the CE as originally intended, and has engendered confusion in the Department. It is now clear that the erroneous version that became final in 2004, though inadvertent, had resulted in a substantive difference in meaning. For example, the use of the word ''and'' made it difficult to apply the CE to an agency action, such as a procedural rule, that has no individual or cumulative significant environmental effects. With the correction effectuated by this 2008 rulemaking (no comments were received with respect to this proposed correction), this CE has now been replaced with its original version. As such, actions such as procedural rules with no individual or cumulative significant environmental effects are covered by the categorical exclusion, as well as circumstances where the action will later be subject to NEPA compliance.

Comment: One commenter stated that the bureau-specific CEs should be included in the proposed rule. Comments also suggest the addition of a new category in the proposed rule which allows the bureaus the discretion to establish other Departmental CEs which are consistent with 43 CFR 46.205. One group suggests revising the proposed rule to cross-reference bureau-specific CEs. This group maintained that this cross-reference will provide better information for the public, as well as promote greater transparency in the NEPA process.

Response: Bureau specific CEs are listed separately in the 516 DM Chapters 8–15 to reflect bureau specific mission and activities. Those DM Chapters remain in effect. Bureaus have specific resource management and environmental conservation responsibilities and their CEs are tailored to these unique missions and mandates. The Departmental CEs are general and are applicable throughout the Department and across all bureaus. Bureaus have the discretion to propose additional CEs that apply in a bureau specific context and which are included in the bureau specific chapters of the DM. If appropriate, bureaus can also propose to the Department additional CEs to augment those already in this rule for future consideration. Such additional proposed CEs would have to be consistent with the broad nature of the already existing Departmental CEs. Cross referencing is unnecessary because bureau specific CEs are unique to that particular bureau and do not apply to other bureaus.

Comment: Several groups cited 40 CFR 1508.27(b), and stated that the Department ''must also perform a cumulative effects analysis prior to promulgation of the CE.'' These groups stated that impacts analysis at the project level does not relieve the Department from the obligation to ensure that the CE has no cumulative impacts. These groups were concerned that the proposed rule on CEs does not comply with NEPA requirements and would violate recent court rulings.

Response: The requirements for establishing agency procedures for implementing NEPA—such as the procedures set forth in this rule, and including CEs—are set forth in CEQ's regulations at 40 CFR 1505.1 and 1507.3. These provisions require agencies to consult with CEQ while developing procedures and to publish the procedures in the **Federal Register** for public comment prior to adoption. The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency NEPA procedures. This means that agencies are not required to prepare a NEPA analysis to establish their NEPA procedures; however, agencies must have a basis for determining that actions covered by proposed CEs do not have individual or cumulative impacts.

Agency NEPA procedures assist agencies in fulfilling agency responsibilities under NEPA and are not, themselves, actions or programs that may have effects on the human environment. Moreover, agency NEPA procedures do not dictate what level of NEPA analysis is required for a particular proposed action or program. Thus, such procedures are not federal actions subject to the requirements of NEPA. The determination that establishing agency NEPA procedures does not itself require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd* 230 F.3d 947, 954–55 (7th Cir. 2000).

By including the Department's CEs in this rule, the Department is merely moving established categories and language addressing extraordinary circumstances from their current location in the DM to the new 43 CFR Part 46. When established as part of the DM, these categories and extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3. The substantiation for those actions included the bases for determining that the actions covered by the CE do not ''individually or cumulatively have a significant effect on the human environment.''(40 CFR 1508.4). This final rule does not add any new categories or—apart from one clarifying addition (explained below)—alter existing language regarding extraordinary circumstances. Therefore, the Department does not believe that this final rule fails to comply with NEPA or the CEQ regulations and believes that the existing procedural

framework established by the statute, CEQ regulations, and existing Department procedures is maintained.

In *Sierra Club* v. *Bosworth,* 2007 U.S. App. LEXIS 28013 (9th Cir., Dec. 5, 2007), the case cited by commenters, the Ninth Circuit determined, in part, that the U.S. Forest Service's establishment of a CE constituted establishment of a program for which a cumulative effects analysis was required. Because this litigation involves a CE that is analogous to a CE used by the Department, the Department has determined that the category in question will remain in the final rule, with the understanding and written direction that it will not be used by the individual bureaus in areas within the jurisdiction of the Ninth Circuit. If, at a later date, the Department determines changes must be made to sections 210 and 215 of part 46, those changes will similarly undergo CEQ review as well as public review and comment. Further, in such event, the Department will comply with all applicable requirements for rulemaking.

Comment: Some groups also suggested that this section of the proposed rule is ''extremely vague and broad.'' These commenters recommended removal of, or expanded limits on, the portions of the CE that authorize mechanical treatment to reduce fuels, as well as those portions which authorize post-fire rehabilitation. Commenters maintain that the allowance of these authorizations would be ''environmentally disastrous.'' Furthermore, these groups recommended implementation of strict measures to ensure that ''temporary roads'' remain temporary.

Response: As explained above, by including the Department's CEs in this rule, the Department is merely moving established categories and language addressing extraordinary circumstances from their current location in the DM to the new 43 CFR Part 46. When established as part of the DM, these categories and extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3 (for example, see 68 **Federal Register** 33813 published on June 5, 2003). This final rule does not add any new categories or alter existing language regarding extraordinary circumstances, with the exceptions noted above with respect to the language of the CEs, including the correction of the typographical error in paragraph 46.210(i) and the clarification in section 46.215 noted below.

Comment: Some commenters suggested modification of the proposed rule in such a way that the collection of small samples for mineral assessments be included within educational CEs. Other commenters recommended the proposed rule be modified to incorporate CEs for the Fish and Wildlife Service. Another commenter recommended that the Department adopt its own CE relating to the installation, maintenance, or restoration of artificial water developments used in the conservation of wildlife. In addition, this commenter suggests clearly defining small water control structures in the proposed rule.

Response: See responses above.

Section 46.215 Categorical Exclusions: Extraordinary circumstances. This section contains a listing of the Department's CEs: Extraordinary Circumstances (currently 516 DM Chapter 2, Appendix B–2). This section includes the same number of CEs: Extraordinary Circumstances as were in the DM, and the wording in the CEs: Extraordinary Circumstances is essentially unchanged. Similar to the listing of CEs, each of the Extraordinary Circumstances was published for public comment prior to inclusion in the DM. The CEs: Extraordinary Circumstances are in paragraphs (a) through (l). In the proposed rule, and in this final rule, the only change from the way the Extraordinary Circumstances appeared in the DM is the addition of the following sentence to section 46.215: ''Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.'' This is not a substantive change to the extraordinary circumstances themselves, but reflects the authority and the responsibility of the RO. Similarly, the phrase ''as determined by the bureau'' (which appears in the DM) was inadvertently left out of the proposed rule at paragraph 46.215(g); the final rule therefore reads: ''Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.'' While the DM provision (*see* 69 FR 19866, Mar. 8, 2004) that is being replaced by this rule read ''as determined by either the bureau or office,'' only ''bureau'' is used here, to be consistent with the definition of ''bureau'' in the final rule, at section 46.30.

Comment: Another commenter believed that the Executive Order on Facilitation of Hunting Heritage and Wildlife Conservation should form the basis of extraordinary circumstances and should be added to the proposed rule.

Response: As noted above, no new CEs or extraordinary circumstances are being added at this time. That being said, the Department is aware of the referenced Executive Order and will incorporate in Departmental directives, as appropriate, any plan developed under the Executive Order for the management of resources under the Department's jurisdiction.

Comment: Some commenters stated that lands found to have ''wilderness characteristics,'' such as citizen proposed wilderness areas, do not constitute extraordinary circumstances. Many commenters suggested that the Department revise this section of the proposed rule to clarify that the term ''highly controversial environmental effects'' does not include instances where there is merely a public controversy.

Response: The Departmental list of extraordinary circumstances specifies wilderness areas or wilderness study areas but not wilderness characteristics or citizen proposed wilderness areas. As noted above, no new extraordinary circumstances are being added as part of this initiative. That being said, just as with any other resource value, there may be circumstances where the issue of effects on areas with wilderness characteristics may be captured under the existing extraordinary circumstances.

Comment: One commenter requested, ''where an Interior agency proposes to categorically exclude a decision from review under NEPA, that the agency include the proposed decision on NEPA registers available on the agency's Web site.'' This commenter also requested eliminating the adoption of regulations and policies from the list of Departmental CEs, as found in paragraph (i).

Response: The Department declines to adopt the commenter's recommendation regarding making the proposed decisions supported by CEs available on bureau *Web site*(s). From a practical standpoint, many thousands of proposed actions annually are categorically excluded. To list each use of a CE on a NEPA register or bureaus' Web sites would prove overly burdensome. The Department declines to adopt the commenter's recommendation regarding eliminating the adoption of regulations and policies from the list of Departmental CEs, as found in paragraph (i). As explained above, the Department is not changing the language of the CEs or the extraordinary circumstances in the final rule, but is merely moving them from the DM to regulations.

Comment: Some groups stated that the proposed rule severely narrows the definition of extraordinary

circumstances. These groups also believed the proposed rule allows the Department to illegally manipulate NEPA's threshold question.

Response: This final rule simply moves established categories and language on extraordinary circumstances from the Department's NEPA procedures previously located in 516 DM 2, Appendix 1 and 2; no change was proposed or is made to the extraordinary circumstances themselves in the final rule. As noted above, these categories and requirements were established following public review and comment, in consultation with CEQ and with CEQ's concurrence, pursuant to 40 CFR 1507.3. The final rule does not add any new categories, nor does it substantively alter existing requirements regarding review for extraordinary circumstances. The Department notes that contrary to the commenter's assertion that the threshold question with respect to the extraordinary circumstances review is altered, the prefatory statement to the list of extraordinary circumstances was, and remains ''Extraordinary circumstances (see § 46.205(c)) exist for individual actions within CXs that *may* meet any of the criteria listed in paragraphs (a) through (l) of this section.'' (Emphasis added.)

Section 46.220 How to designate lead agencies. This section provides specific detail regarding the selection of lead agencies.

Comment: Some commenters stated that the proposed rule needs to address how a lead agency will be designated when more than one federal agency is involved. These commenters recommended that the Department consider requiring the consent of an agency before it can be named the lead agency. In addition, commenters suggested that the Department may want to recognize in the proposed rule that the RO would need to comply with any applicable statutory or regulatory requirements in the designation of the lead agency.

Response: CEQ regulations at 40 CFR 1501.5 establish guidelines on the designation of a lead agency, including resolution of the question of designation, in the event of dispute. The RO complies with this rule in the designation of a lead agency.

Section 46.225 How to select cooperating agencies. This section establishes procedures for selecting cooperating agencies and determining the roles of non-Federal agencies, such as tribal governments, and the further identification of eligible governmental entities for cooperating agency relationships. Criteria for identifying, and procedures for defining, the roles of cooperating agencies and the specific requirements to be carried out by cooperators in the NEPA process are set forth in this section.

Comment: Several commenters supported consensus-based management for resolving competing government interests.

Response: The Department appreciates the comments.

Comment: Some commenters suggested that lead NEPA agencies must collect the ''best available information,'' with the decision-making process based on this information. These commenters also proposed modification of the proposed rule to ''encourage'' the use of this section in preparing an EA.

Response: The Department collects the high quality information, and that information supports the NEPA analysis which contributes to the decision-making process. This is consistent with CEQ requirements. The Department declines to make the recommended change to paragraph 46.225(e); ROs are given the latitude to exercise discretion in this regard.

Comment: Many commenters supported the use of memoranda of understanding (MOU) and recommended revision of the proposed rule to include clarification on cooperating agency status and limitations, as well as a schedule for the environmental document.

Response: Paragraph 46.225(d) provides for the use of memoranda of understanding (MOU) between the lead and cooperating agencies. The MOU provides a framework for cooperating agencies to agree to their respective roles, responsibilities and limitations, including, as appropriate, target schedules. The requirement with respect to memoranda of understanding in paragraph 46.225(e) may apply to EAs also.

Section 46.230 Role of cooperating agencies in the NEPA process. This section provides specific detail regarding the responsibilities of cooperating agencies.

No comments were received for this section.

Section 46.235 NEPA scoping process. This section discusses the use of NEPA's scoping requirements to engage the public in collaboration and consultation for the purpose of identifying concerns, potential impacts, relevant effects of past actions, possible alternatives, and interdisciplinary considerations. The regulatory language encourages the use of communication methods (such as using the Internet for the publications of status of NEPA documents on bulletin boards) for a more efficient and proactive approach to scoping.

Comment: Some organizations stated that the Department has offered no explanation for the lack of required scoping when preparing an EA or applying a CE, as compared with scoping for an EIS. These organizations maintained that this lack of scoping contradicts the proposed guidance found in paragraph 46.200(b). These commenters stated that federal agencies are required to ensure proper public involvement when implementing NEPA and suggested public scoping assists in making an informed decision.

Response: Although scoping is not required for the preparation of an EA (CEQ regulations at 40 CFR 1501.7 specifically reference the preparation of an EIS), the Department encourages the use of scoping where appropriate as it does represent a form of public involvement, which is a requirement of EAs. The Department has added language to clarify the relationship between this section and section 46.305. In addition, in contrast to the rule as proposed, the Department has also clarified that while public notification and public involvement are required to the extent practicable in the preparation of an EA, the RO has the discretion to determine the manner of this public notification and public involvement. See paragraph 46.305(a). Scoping is not a step necessary to document a CE. The Department recognizes and acknowledges the importance of scoping as a form of public involvement and participation in the NEPA process, wherever it is appropriate, in that it can serve the purpose of informed decision making.

Comment: One commenter recommended clarification of ''interdisciplinary considerations'' in the proposed rule.

Response: This rule ensures that the use of the natural, social, and the environmental sciences as required under section 102(2)(A) of NEPA. As recommended by the commenter, we have clarified this provision by replacing the phrase ''interdisciplinary considerations'' in paragraph 46.235(a) with the phrase ''interdisciplinary approach'' as provided in 40 CFR 1502.6.

Section 46.240 Establishing time limits for the NEPA process. The section requires bureaus to establish time limits to make the NEPA process more efficient.

Comment: One commenter pointed out that the proposed rule does not explain why time limits should be established. This commenter recommended the addition of specific

guidance and direction to the proposed rule so bureau staff can process NEPA documents with minimal delay.

Response: CEQ regulations at 40 CFR 1501.8 encourage federal agencies to set time limits appropriate to individual actions. This rule requires individual bureaus to establish time limits, as appropriate, to expedite the NEPA process and to ensure efficiency, especially when project completion may be time sensitive or when statutory or regulatory timeframes may be applicable. The Department believes individual bureaus are best situated to establish time frames on a case-by-case basis, and does not deem it necessary to implement specific additional guidance to ensure that delays are not encountered in the NEPA process.

Comment: Another commenter stated that the proposed rule appears to be focused solely on internal administrative factors and fails to acknowledge that complex projects and potential impacts could seriously affect timelines. Commenters also suggested that the availability of the public to participate in the process needs to be considered and accounted for when setting time limits. Multiple commenters supported establishing time limits for the NEPA process on a case-by-case basis, as long as the time limits do not impose a schedule that cannot facilitate the project proponent's goals and objectives for the proposed action.

Response: The Department does not have a prescribed time limit for each proposed step in the NEPA process. In each case, time limits are set based on a consideration of factors such as funding, staff availability, public needs, and the complexity of the proposed action. The Department realizes that the proponent's goals and objectives are a consideration in scheduling the time considerations, as well as the factors mentioned above.

Comment: Several commenters requested an addition to the proposed rule ''that cooperating agencies represent that they have sufficient qualified staff and necessary resources to participate as a cooperating agency on the project and meet project deadlines.'' Several commenters also recommended several additions to the proposed rule to strengthen time limit requirements.

Response: The MOU as required under paragraph 46.225(d) is a mechanism for establishing that such cooperating agencies represent that they have sufficient qualified staff to participate on the project and meet project deadlines. The Department does not believe any change to the final rule is necessary.

Subpart D: Environmental Assessments

In the conversion from 516 DM Chapter 3 to 43 Part 46 Subpart D, we have written this rule to incorporate procedural changes, expand upon existing procedures, give greater discretion and responsibilities to bureaus, and provide clarity in the EA process.

Section 46.300 Purpose of an EA and when it must be prepared. This section clarifies that the action being analyzed is a ''proposed'' action. It expands upon the purpose and clarifies when to prepare an EA.

Comment: One group recommended that the Department add a provision to assure that all decisions made by the RO after preparing an EA or an EA and FONSI are in writing and include the Official's reasoning behind that decision.

Response: This rule addresses the Department's NEPA procedures and not the Department's decision-making authorities. The Department has decided that documentation requirements for decisions on proposed actions made on the basis of preparation of EAs and FONSIs are outside the scope of this rule. That is, bureau decision making itself is governed by Department and bureau-specific authorities. Section 46.325 describes the culmination of the EA process rather than documentation of a final decision on the proposed action and has been edited to ensure this point is clearly made.

Comment: Another group stated that wording in paragraph (a), in the context of the Bureau of Indian Affairs, may be misleading since many EAs are prepared by a tribal government agency. These commenters suggested that paragraph (a) be revised as follows: ''A bureau must ensure that an EA is prepared for all proposed Federal actions * * *''

Response: The Department concurs and has revised the language at paragraph 46.300(a) to reflect the suggested change.

Section 46.305 Public involvement in the EA process. This section incorporates procedural changes and differentiates the requirements for public involvement in the EA and EIS processes. This section has been revised from the proposed to require bureaus, to the extent practicable, to provide for public notification and public involvement when an environmental assessment is being prepared. This represents a change from the rule as proposed, which had included a requirement that ''The bureau must provide for public notification when an EA is being prepared.'' The Department has made this change in order to be more consistent with CEQ regulations, which do not require bureaus to provide such notice in each and every instance, but only require that Federal agencies ''shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the quality of the human environment.'' 40 CFR 1500.2(d). With respect to EAs, CEQ regulations require that agencies provide notice of the availability of such environmental documents, but are otherwise quite general in approach to public involvement in EAs. *See* 40 CFR 1501.4(b) and 1506.6. As the Department's bureaus prepare thousands of EAs each year—many times for routine matters for which there are not categorical exclusions, but for which there is no interest on the part of the public—a categorical public notification requirement would prove a fairly substantial burden. Therefore, discretion is left to the RO in each case to determine how best to involve the public in a decision that affects the quality of the human environment.

This section has also been expanded to give bureaus the discretion to provide cooperating agency status for EAs. It specifies that the publication of a draft EA for public comment is one method available for public involvement, but it is not required.

Comment: Some commenters supported this section of the proposed rule as it is currently written. These commenters believed that the proposed rule is consistent with CEQ regulations, which only require public involvement in EAs to the extent practicable.

Response: The Department appreciates the comments and has clarified that because notification is a means of public involvement, it too is subject to the qualifier ''practicable'' and has revised the final rule as described above.

Comment: This section of the proposed rule directs bureaus to consider comments that are ''timely'' received. One commenter maintained that the proposed rule did not adequately define ''timely.'' This commenter also recommended stating in the rule ''that if no comments are received during this 30-day comment period, the decision is made using the content of the draft document.''

Response: Publication of a ''draft'' EA is not required. The RO has the discretion whether to invite comments on an EA. If an RO requests comments, there will be a stated time limit to the comment period. Comments not received within this stated time limit may be deemed untimely by the RO. It

is left to the discretion of the RO to take action when comments have been received after the end of the comment period.

Comment: Several commenters also supported the proposed provision which would allow cooperating agencies to participate in the development of EAs. They recommended rewording of the proposed rule to ''encourage'' cooperating agency participation, not merely ''permit'' this participation.

Response: The rule has used ''may allow'' rather than the term ''encourage,'' because cooperating agency involvement in an EA is a matter of discretion for the RO; no change is made to the final rule.

Comment: Many commenters supported publication of draft EAs and recommended modification of the proposed rule to support publication of draft EAs. These commenters believed that this section of the proposed rule is in violation of CEQ direction and that public review of environmental documents has the potential to identify information about impacts or resource uses that would be otherwise unknown.

Response: The manner of public involvement, including the publication of a draft EA, is a matter of discretion for the RO; this provision is consistent with 40 CFR 1501.3.

Comment: Several commenters expressed disappointment that ''the language in the Department's NEPA proposed rule focuses on how not to provide public involvement opportunities in section 46.305.'' This group maintained that it is essential that the public effectively be involved in the NEPA process, that public participation is a fundamental component of NEPA, and that public involvement extends to all ''environmental documents,'' including EAs. These commenters urged the Department to include positive language in the proposed rule to involve the public in the preparation of an EA, including requiring publishing of draft EAs for public comment, and establishing clear and specific guidelines for public involvement in the EA process.

Response: The Department strongly encourages public involvement and participation in the NEPA process at all stages. However, consistent with CEQ regulations, the Department's final rule distinguishes between ''public involvement'' and ''public comment.'' With respect to EISs, CEQ's regulations specify that the public must have the opportunity to comment on a draft EIS. By contrast, the CEQ regulations do not specify that public involvement should take any particular form for EAs, as recognized by every court that has decided the issue. Therefore, the Department's final rule clarifies that the RO has the discretion to determine how public involvement in the preparation of an EA is to occur, depending on the particular circumstances surrounding the proposed action. Bureaus engage in a wide variety of routine actions, for which EAs are prepared (*e.g.*, approval of replacement of culverts, erection of fences, etc.). Therefore, it is neither necessary nor practical for public comment to be required for each of these EAs. Public involvement can take a variety of forms, ranging from notification on bureau or field office Web sites to the holding of public meetings. Some of the bureaus provide more specific direction on facilitating public involvement (see 516 DM Chapters 8–15 and bureau handbooks).

Comment: Another commenter recommends that the proposed rule should ensure that communities and tribes potentially impacted by the proposed action have adequate opportunities to participate in the development of an EA.

Response: See response above regarding the CEQ requirement respecting public involvement. The circumstances surrounding each proposed action may interest a variety of members of the public, including, but not limited to, communities and tribes potentially impacted by the proposed action. The RO has the discretion to implement public notification and public involvement measures appropriate to the proposed action, and affected communities. In addition, as noted above, and independent of its responsibilities under NEPA, the United States has a government-to-government relationship with federally-recognized tribes. In accordance with this responsibility, the Department specifically provides for consultation, coordination and cooperation within the framework of government-to-government consultation.

Section 46.310 Contents of an EA. This section establishes new language outlining what information must be included in an EA. It describes the requirements for alternatives, if any, and provides for incorporating adaptive management strategies in alternatives. Sections on tiered analysis, from 516 DM Chapter 3, are found in subpart B of this rule, since this information pertains to both EISs and EAs.

Comment: Several commenters supported this section of the proposed rule as it is currently drafted. These commenters maintained that CEQ regulations only require that an EA contain a brief discussion of the environmental impacts of the proposed action and alternatives.

Response: The Department appreciates the comments.

Comment: Other commenters stated that this section of the proposed rule should be removed because it conflicts with NEPA, CEQ regulations, and existing case law.

Response: The Department disagrees. This section fully complies with NEPA and CEQ regulations, as well as CEQ guidance. On September 8, 2005, the CEQ issued EA guidance to Federal agencies entitled ''Emergency Actions and NEPA'' that explained language at section 102(2)(E) of NEPA ''unresolved conflicts concerning alternative uses of available resources'' (42 U.S.C. 4332(2)(E)). The CEQ guidance states: ''When there is consensus about the proposed action based on input from interested parties, you can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, you need to develop reasonable alternatives to meet project needs'' (Attachment 2 ''Preparing Focused, Concise and Timely Environmental Assessments'', *http://ceq.eh.doe.gov/nepa/regs/Preparing_Focused_Concise_and_Timely_EAs.pdf*).

Comment: Several commenters stated that the proposed rule calls for a superficial analysis of impacts, which creates the potential for inadequate research. These commenters were concerned that this superficial analysis will not provide an adequate analysis of impacts, will only serve to exacerbate conflict and will result in poor decision-making and possible litigation.

Response: The Department disagrees. CEQ regulations describe EAs as ''concise'' documents that ''briefly'' provide information sufficient to determine whether preparation of an EIS is required. CEQ has issued guidance consistent with this idea (see September 8, 2005 CEQ guidance referenced above). The Department does not believe that conciseness necessarily leads to a superficial analysis.

Comment: These commenters therefore suggested that ''consensus'' be changed to ''unanimity'' to assure that there is no confusion about the limited circumstances in which paragraph 46.310(b) applies.

Response: ''Unanimity'' is not required; therefore, the Department declines to make the suggested alteration to the final rule.

Comment: One commenter suggested that the cumulative effects of the proposed action and other previous actions should be included in the list of things that must be discussed in an EA.

Response: This rule does not attempt to alter the requirements of the CEQ regulations. Rather, paragraph 46.310(a)(3) of the Department's final rule requires that EAs include brief discussions of the environmental impacts of the proposed action. Environmental impacts include direct, indirect and cumulative impacts (40 CFR 1508.7 and 1508.8). A separate listing of the requirement to include discussion of any cumulative impacts is not necessary.

Section 46.315 How to format an EA. This section provides clarification on the EA format.

No comments were received on this provision.

Section 46.320 Adopting EAs prepared by another agency, entity, or person. In this section, the term ''and other program requirements'' has been added to the compliance stipulations. It also expands the requirements of the RO in adopting another agency's EA.

Comment: One commenter suggested that a new section be added to the proposed rule which includes the requirement that the RO ''consults with other agencies that have regulatory authority over the project'' when adopting an EA prepared by another agency. This commenter maintained this will help ensure that other affected agencies agree with the adoption. Another organization suggested that this section of the proposed rule should state that an Indian tribe may be the applicant.

Response: The determination to adopt another agency's EA is left solely to the discretion of the RO. However, the Department expects that the RO will consult with any other agency that has regulatory authority over the project that is the subject of a bureau's proposed action and environmental analysis. In fact, this final rule provides at section 46.155: ''The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of bureau plans, programs, and activities within the jurisdictions or related to the interests of these agencies.'' This provision applies to proposed actions supported by both EAs and EISs. As such no change has been made to section 46.320.

The Department recognizes generally that an Indian tribe may be an applicant, as well as a State or other unit of government; paragraph 46.300(a) has been modified to read: ''A bureau must ensure that an EA is prepared for all proposed Federal actions'' in order to reflect that it may be the applicant who is preparing the EA, especially when a tribe is the applicant. No other change in this respect has been made to the final rule.

Section 46.325 Conclusion of the EA process. Documentation requirements for decisions made on the basis of EAs and FONSIs are beyond the scope of this rule. After a bureau has completed an EA for a proposed action, the bureau will make a finding of no significant impact, or will determine that it is necessary to prepare an EIS, in which case, the bureau will publish a Notice of Intent in the **Federal Register** or will take no further action on the proposal.

Comment: Several commenters ''suggested that the requirement that a decision be documented also include a requirement that the document be made public.''

Response: Bureau decision documents are public documents. While some bureaus routinely publish these documents (for instance on bureau or field office Web sites), the Department is not including a requirement that all decision documents be published. Decision documents are available from bureaus upon request.

Subpart E: Environmental Impact Statements

This subpart takes the place of 516 DM Chapter 4, with following exceptions.

The language from 516 DM Chapter 4 that simply reiterates the CEQ regulations is not included in subpart E of this rule. Those DM sections are: statutory requirements, cover sheet, summary, purpose and need, appendix, methodology and scientific accuracy, proposals for legislation, and time periods.

Sections on tiering, incorporation of referenced documents into NEPA analysis, incomplete or unavailable information, adaptive management, and contractor prepared environmental documents, from 516 DM Chapter 4 are found in subpart B of this rule since that information pertains to EISs and EAs.

The phrase ''environmentally preferable alternative'' is found in the definitions, subpart A. This phrase expands on the definition that currently exists in 516 DM 4.10(A)(5).

This rule also incorporates procedural changes, clarifies the extent of discretion and responsibility that may be exercised by bureaus and provides clarity in the EIS process.

Section 46.400 Timing of EIS development. This section describes when an EIS must be prepared.

Comment: One commenter recommended revising the definition of ''environment'' within the proposed rule to avoid disputes.

Response: Neither the Department's proposed nor final rule includes a definition of ''environment.'' Neither NEPA nor the CEQ regulations define this term; however, the CEQ regulations do define ''human environment,'' and the definitions in the CEQ regulations apply (see sections 46.20 and 46.30). The Department does not believe that a definition is required.

Comment: One commenter stated that it is important to note that the RO should not have the authority to mandate whether an applicant must pay for environmental analyses. The commenter recommended that the applicant should be given the opportunity to voluntarily fund the NEPA analysis. Others recommended that any reference to who pays for the analysis be deleted from the proposed rule.

Response: The provision in the Department's final rule specifies only that the RO ''must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposal.'' This provision refers specifically to the responsibility of the RO to inform the applicant of any such requirements in each instance. (As noted above in the introduction to section 46.200, this provision has been moved from section 46.400 to section 46.200 because it applies to EAs as well, and the application to EAs was inadvertently left out of the proposed rule.) The question of whether an RO may require an applicant to pay for NEPA analysis is outside the scope of this rule because programs and bureaus have different payment requirements, for example, under their cost recovery authority, if applicable.

Section 46.405 Remaining within page limits. This section encourages bureaus to keep EISs within the page limits described in the CEQ regulations using incorporation of referenced documents into NEPA analysis and tiering.

No comments were received on this provision.

Section 46.415 EIS Content, Alternatives, Circulation and Filing Requirements. This section provides direction for the development of alternatives, establishes language on the documentation of environmental effects with a focus on NEPA statutory requirements, and provides direction for circulating and filing the draft and final EIS or any supplement(s) thereto. The Department changed the title of this section and added a sentence to address

Federal Advisory Committee Act (FACA) implications.

Comment: Some commenters supported this portion of the proposed rule as it is written.

Response: The Department appreciates the comments.

Comment: One group stated that the term ''interested parties'' is too broadly defined, resulting in significant delays in agency decision-making. Consequently, standing would be given to parties that otherwise would lack standing to pursue future legal action.

Response: The Department agrees that the meaning of ''interested parties'' is potentially ambiguous and has revised this term to match the language used in the CEQ regulations. Please see the final rule at section 46.110, as well as the responses to comments on that section.

Comment: Some commenters believed that the cumulative effects of the proposed action and other previous actions must also be disclosed in an EIS. Consequently, these commenters recommended adding cumulative effects to the list of terms that must be disclosed in the contents of an EIS.

Response: Paragraph 46.415(a)(3) of the Department's final rule requires that an EIS disclose ''the environmental impact of the proposed action.'' Environmental impact includes direct, indirect and cumulative impacts (40 CFR 1508.7 and 1508.8). The Department does not believe that a separate listing of the requirement to include discussion of cumulative impacts is necessary.

Comment: Several commenters commented on paragraph (c), which provides ''the RO shall make those preliminary draft and final EISs available to those interested and affected persons and agencies for comment.'' The main concern discussed by commenters is that the word ''shall'' implies that the RO will be required to circulate preliminary drafts of EISs. These commenters recommended that the proposed rule should allow public circulation of preliminary EISs when the RO determines that such circulation would be beneficial, but public disclosure should not be required. Other commenters stated it is inappropriate for agencies to share preliminary EISs that represent preliminary agency thoughts. They were concerned that public release of a preliminary document would hinder internal discussion regarding innovative management options available for consideration and analysis.

Response: The Department has elected not to include a ''preliminary environmental impact statement'' in the final rule. Please see the response above to comments on section 46.30.

Comment: One group recommended clarification of the proposed rule by stating that the human environment changes over time, regardless of the action being assessed under NEPA. They recommended this clarification should ''explicitly exclude the idea that nothing changes over time, so the no action alternative means no change.''

Response: The Department acknowledges that some clarification was needed and added language to the final rule. Natural systems evolve over time. The ''no action'' alternative is not the alternative that results in ''no change'' to the environment; rather it represents the state of the environment without the proposed action or any of the alternatives. When the proposed action involves a proposed change in management then, under the no action alternative, what does not change is management direction or level of intensity.

Comment: Another commenter stated ''it is not clear from the proposed rule how or why ''incremental changes'' will be considered as alternatives'' and asked for additional detail regarding the ''incremental process'' and how it interacts with the alternative discussion.

Response: The Department appreciates this comment. The intent of this provision is that modifications to alternatives developed through a collaborative process, may, themselves, be considered alternatives to a proposed action. To avoid confusion, the final rule no longer uses the term ''incremental'' when dealing with alternatives.

Comment: Many commenters fully supported and encouraged analysis of the no action alternative. Several recommended clarification in the proposed rule on how the tenets of adaptive management will work with the requirements for clearly articulating and pre-specifying the adjustments and the respective environmental effects that might later occur. Another commenter encouraged the Department to specify in the proposed rule that alternatives considered throughout the NEPA process must be capable of achieving the project goals.

Response: The Department believes that no further clarification is necessary. The intent of the provision respecting adaptive management is to clarify that the use of an adaptive management approach does not preclude the necessity of complying with NEPA. Each proposed action, including possible changes in management made as a result of an adaptive management approach may be analyzed at the outset of the process or the changes in management made may be analyzed when implemented.

Comment: Several commenters strongly opposed the idea that the RO, with or without input from any interested parties, would be permitted to make modifications to a proponent's proposed action. These commenters recommend eliminating this language in its entirety from the proposed rule.

Response: Bureaus would analyze reasonable alternatives that would meet the purpose and need for action. In determining the range of reasonable alternatives, the range may in some cases be limited by the proponent's proposed action, but the RO must still evaluate reasonable alternatives within that range. As such the RO may include additional alternatives for analysis, including those which represent different modifications of the proposed action. No change to the provision has been made.

Comment: Some commenters requested clarification on the public comment opportunity that follows the publication of a final EIS. They maintained the rule should explain that the public can submit comments on a final EIS prior to an agency's final decision.

Response: CEQ regulations at 40 CFR 1506.10(b)(2) require a 30-day waiting period between publication of the final EIS and signing of a ROD. CEQ guidance states: ''During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. CEQ's ''Forty Most Asked Questions.'' Therefore, while this period is not a formal comment period, the public may comment after the publication of the final EIS.

Section 46.420 Terms used in an EIS. This section describes terms that are commonly used to describe concepts or activities in an EIS, including: (a) Statement of purpose and need, (b) Reasonable alternatives, (c) Range of alternatives, (d) Proposed action, (e) Preferred alternative, and (f) No action alternative. Definitions for proposed action and no action alternative have been moved to the definitions in section 46.30 as they may both be applicable to EAs as well as EISs. Comments and responses on these terms, however, are below. In order to clarify that it is the bureau's exercise of discretion that constitutes a proposed action that is subject to NEPA requirements, not just that the bureau might have a statutory role over a non-Federal entity's planned activity, the final rule has been changed to read ''discretion'' rather than

''authority'' in proposed paragraph 46.420(d), which is now in section 46.30. Section 46.30 explains that a ''proposed action'' includes ''the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments.''

Comment: Several commenters stated that the proposed rule should clarify that, in order for an alternative to be reasonable, it must also be technically and economically feasible based upon input from the project proponent. These commenters stated that the term ''range of alternatives'' is defined without regard to the technical and economic feasibility of the alternatives.

Response: The Department's final rule, at paragraph 46.420(b), specifies that the term ''reasonable alternative'' includes alternatives that are technically and economically practical or feasible and that satisfy the purpose and need. The Department agrees that the project proponent, as a member of the public, may provide input to the bureau with respect to the technical and economic feasibility of alternatives. Ultimately, however, the bureau determines whether an alternative is technically and economically practical or feasible and meets the purpose and need of the proposed action. The Department did not include a reference to technical and economic feasibility in the definition of ''range of alternatives.'' Consistent with CEQ's regulations, 40 CFR 1505.1(e), and as explained in CEQ's ''Forty Most Asked Questions'' document, the range of alternatives includes all or a reasonable number of examples covering the full spectrum of reasonable alternatives, each of which must be rigorously explored and objectively evaluated, as well as those other alternatives which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. This includes alternatives that may not be technically and economically feasible. The Department's final rule, at paragraph 46.420(c), maintains this broad meaning of ''range of alternatives.''

Comment: Many commenters recommended that the rule expressly state that the applicant's goals should be the primary consideration in the development of the statement of purpose and need. These commenters stated the Department should remove language in the proposed rule that requires agencies to consider the public interest in approving an application.

Response: The Department agrees that the bureau should consider the needs and goals of the parties involved, including the applicant. However, the public interest is also a key consideration under NEPA. As such the Department has not changed the language of this provision in the final rule.

Comment: One group recommended using the definition in paragraph 46.420(b) for the feasibility requirement throughout the proposed rule because it is the most complete definition.

Response: The Department concurs with the intent of this recommendation and has implemented this recommendation by changing 46.415(b) to read ''range of alternatives'' rather than ''reasonable alternatives,'' as ''range of alternatives'' as defined at paragraph 46.420(c) incorporates the definition of ''reasonable alternatives'' at paragraph 46.420(b).

Comment: One commenter stated that the definition of ''range of alternatives'' is circular and should be revised.

Response: The Department agrees and has clarified that the phrase ''rigorously explored and objectively evaluated'' in the CEQ regulations applies only to reasonable alternatives.

Comment: One commenter recommended that the Department distinguish the proposed federal action from the proposed project or activity for which the federal action is necessary.

Response: The Department agrees and has clarified the language of section 46.30 (formerly proposed as paragraph 46.420(d)). Paragraph 46.420(d) explains that a ''proposed action'' includes ''the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments.''

Comment: A commenter agreed with the statement that no action can mean either no action or no change and that the proposed rule should acknowledge that the effect of the no action alternative is not always maintenance of the status quo.

Response: As specified in proposed paragraph 46.420(f) and now at section 46.30, the Department agrees that the no action alternative has two interpretations—''no change from a current management direction or level of management intensity'' or ''no project.'' Natural systems evolve over time. The ''no action'' alternative is not the alternative that results in ''no change'' to the environment; rather it represents the state of the environment without the proposed action or any of the alternatives. The Department has made minor edits to this section to clarify this point.

Comment: One individual recommended inserting ''national policies'' after ''giving consideration to'' in paragraph (e).

Response: The Department does not believe it is necessary to specifically include ''national policies'' as one of the factors that the bureau considers in identifying the preferred alternative. Proposed paragraph (e), now (d), refers to ''other factors,'' which is broad enough to include a variety of considerations, including, if appropriate, national policies.

Comment: One commenter stated that it is unclear whether the terms ''practical'' and ''feasible'' are intended to be synonymous within the proposed rule.

Response: These terms are not intended to be synonymous. CEQ's ''Forty Most Asked Questions'' explains ''reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense.'' Any given reasonable alternative could be practical, feasible, or both.

Comment: One commenter encouraged the Department to revise the proposed rule to clarify and reflect established NEPA precedent that agencies need not conduct a separate analysis of alternatives that have substantially similar consequences.

Response: The Department agrees that bureaus need not separately analyze alternatives that have been shown to have substantially similar environmental consequences. This is a well-established principle; no change to the final rule is necessary.

Section 46.425 Identification of the preferred alternative in an EIS. This section clarifies when the preferred alternative must be identified.

Comment: Several groups questioned why more than one preferred alternative would be necessary and recommend that only one preferred alternative be allowed to avoid confusion.

Response: The Department's final rule is consistent with CEQ regulations, which expressly contemplate situations in which more than one preferred alternative may exist. 40 CFR 1502.14(e). Rather than confusing the public, the Department believes that in certain circumstances presentation of more than one preferred alternatives may encourage public involvement in the process.

Section 46.430 Environmental review and consultation requirements. This section establishes procedures for an EIS that also addresses other

environmental review requirements and approvals. It should be noted that this section allows for the completion of the NEPA analysis prior to obtaining all permits. However, if the terms of the permit are outside of the scope of analysis, additional NEPA analysis may be required.

Comment: One commenter commented that CEQ is currently undertaking a project to integrate review under NEPA and the National Historic Preservation Act (NHPA). This commenter recommended that the Department assure effective integration of that project's results with the proposed rule. In order to protect statutory rights of Indian tribes, another group recommended integration of regulations from the Advisory Council on Historic Preservation in this section of the proposed rule.

Response: Regulations implementing the National Historic Preservation Act (NHPA) at 36 CFR Part 800 encourage Federal agencies to coordinate compliance with section 106 of the NHPA with steps taken to meet the requirements of NEPA (36 CFR 800.8(a)). The Department is aware of the CEQ initiative to develop guidance to integrate review under NEPA and the NHPA, as called for in both the NHPA and the CEQ regulations (40 CFR 1502.25(a)) and will work with CEQ to integrate any such guidance in the Department's directives as appropriate. Please see response to comments addressing section 46.110 above regarding the Department's fulfillment of its responsibilities toward Indian tribes.

Comment: One group strongly supported consolidation of processes whenever possible to reduce delays and eliminate duplication of effort. This group proposed revision of the proposed rule to promote the consolidation of processes ''to the extent possible and otherwise not prohibited by law.'' This group also recommended the establishment of an exemption for mining operations based on the ''functional equivalence doctrine.'' They maintained that other laws and regulations applicable to the mining operations provide a rigorous framework for providing a ''harder look'' at environmental consequences than NEPA.

Response: The Department appreciates the support for its efforts to encourage consolidation of processes whenever possible. However, the Department does not believe the revision proposed by the commenter to paragraph 46.430(b) is necessary. The Department does not believe such an exemption for mining operations as advocated by the commenter is warranted, as it addresses matters beyond the scope of this rulemaking.

Comment: One commenter recommended revision of ''Paragraph (a) to clarify that an EIS need only identify and discuss studies relied upon for other consultation and review processes if the EIS is intended to serve as the NEPA compliance for those review processes.''

Response: The Department believes no revision to the final rule is necessary. When paragraph 46.430(a) states ''An EIS that also addresses other environmental review and consultation requirements. * * *'' this means that it is precisely when the EIS in question is to serve as the NEPA compliance (in whole or in part) for the other environmental review and consultation requirements that the EIS needs to identify and discuss studies relied upon for these other review and consultation processes.

Section 46.435 Inviting comments. This section requires bureaus to request comments from Federal, State, and local agencies, or tribal governments, and the public at large. This section also clarifies that bureaus do not have to delay a final EIS because they have not received comments.

Comment: One group proposed revisions to the proposed rule, which include: (1) Requesting comments from any potentially affected tribal government, (2) recognizing the federal government's continuing obligation to consult with tribal governments prior to making decisions which may impact tribal rights, (3) revising paragraph (c) to include all lands and waters within the boundaries of tribal lands, (4) inserting language to explicitly include Alaska Native tribes, and (5) including additional clauses covering various situations in which the Department must invite comments from a tribe. This group proposed these revisions because it believes the current language could be interpreted too narrowly by the Department bureaus, resulting in bureaus deciding not to request comments from tribal governments, even though a proposed action may affect tribal rights or interests.

Response: CEQ regulations at 40 CFR 1503.1(a)(4) require that agencies shall request the comments on a draft EIS from ''the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.'' This would necessarily include ''any potentially affected tribal government'' regardless of whether the proposed action may affect the environment of Indian trust or restricted land or other Indian trust resources, trust assets, or tribal health and safety, as specified in 46.435(c). In view of the CEQ regulations, the Department does not believe it is necessary to include the commenter's proposed language in this final rule. For instance, under 40 CFR 1503.1(a)(4), the bureaus would need to request comments from those persons or organizations affected by impacts to the resources noted by the commenters, including ''one or more historic properties to which the tribe attaches religious and cultural significance'' or ''wildlife or plant species that are important to the tribe for cultural purposes.'' Likewise, if any member of the public specifically requests information regarding the analysis of effects of a proposed action on a specific identified area, the bureau would provide that information.

This being said, the requirement to engage in government-to-government consultation with Indian tribes is a requirement apart from NEPA, and, in effect, broadens any consultation that needs to take place as a function of compliance with NEPA. The Department has other, more specific directives addressing government-to-government consultation, as well as how the Department is to fulfill its trust responsibilities. See, *e.g.*, 512 DM 2: ''Departmental Responsibilities for Indian Trust Resources''; ECM97–2 ''Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands''.

Comment: One commenter encouraged the Department to provide for better coordination with permit applicants when the federal action being examined involves the issuance of a federal permit or authorization.

Response: Please see discussion, above, regarding paragraph 46.430(a).

Section 46.440 Eliminating duplication with State and local procedures. This section allows a State agency to jointly prepare an EIS, if applicable.

No comments were received addressing this provision.

Section 46.445 Preparing a legislative EIS. This section ensures that, when appropriate, a legislative EIS will be included as a part of the formal transmittal of a legislative proposal to the Congress.

No comments were received addressing this provision.

Section 46.450 Identifying the environmentally preferable alternative. This section provides for identifying the environmentally preferable alternative in the ROD.

Comment: One commenter supported this part of the proposed rule as it is written. Multiple commenters oppose

this section of the proposed rule and urge the Department to delete this section from the proposed rule. They believed ''that this provision is not necessary in light of the existing CEQ regulation found at 40 CFR 1505.2.'' In the event that Department does not remove this section from the proposed rule, these commenters recommended that the Department revise this section to include clarification that this rule in no way obligates agencies to identify and select an ''environmentally preferable alternative'' during its NEPA analysis.

Response: The Department appreciates these comments, but believes this provision is necessary to distinguish between ''identifying'' and ''selecting'' an environmentally preferable alternative, both for Departmental personnel and members of the public. Although the environmentally preferable alternative must be identified in the ROD, the RO is not required to select the environmentally preferable alternative as the alternative that will be implemented. No change is made in the final rule.

Procedural Requirements

Regulatory Planning and Review (E.O. 12866)

This is a significant rule and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule:

(1) Is not an economically significant action because it will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments.

(2) Will not interfere with an action taken or planned by another agency.

(3) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

(4) Raises novel policy and legal issues. It is a significant rulemaking action subject to OMB review because of the extensive interest in Department planning and decision making relating to NEPA.

In accordance with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' the Department has conducted a cost/benefit analysis. The analysis compared the costs and benefits associated with the current condition of having Departmental implementing procedures combined with Departmental explanatory guidance in the DM and the condition of having implementing direction in regulations and explanatory guidance in the DM.

Many benefits and costs associated with the rule are not quantifiable. Some of the benefits of this rule include collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, and flexibility in preparation of environmental documents. These will be positive effects of the new rule.

Moving NEPA procedures from the DM to regulations is expected to provide a variety of potential beneficial effects. This rule would meet the requirements of 40 CFR 1507.3 by placing the Department's implementing procedures in their proper regulatory position. The Department will maintain Department- and bureau-specific directives in the DM and bureau handbooks to assist field offices. This will facilitate timely bureau responses to procedural interpretations, training needs, and editorial changes to addresses and Internet links to assist bureaus when implementing the NEPA process. Finally, the changes to the Department NEPA procedures are intended to provide the Department specific options to meet the intent of NEPA through increased emphasis on collaboration and the use of a consensus-based approach when practicable.

Thus, while no single effect of this rule creates a significant quantifiable improvement, the benefits outlined above taken together create the potential for visible improvements in the Department's NEPA program. Further discussion of the costs and benefits associated with the rule is contained in the economic analysis which is incorporated in the administrative record for this rulemaking and may be accessed on the Department's Office of Environmental Policy and Compliance Web site located at: *http://www.doi.gov/oepc*.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Takings (E.O. 12630)

This rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property.

Federalism (E.O. 13132)

The Department has considered this rule under the requirements of E.O. 13132, Federalism. The Department has concluded that the rule conforms to the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

In accordance with E.O. 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on tribal trust resources and have determined that it does not directly affect tribal resources since it describes the Department's procedures for its compliance with NEPA.

Paperwork Reduction Act

This rule does not contain information collections subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

National Environmental Policy Act

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd 230 F.3d 947. 954–55 (7th Cir. 2000).

Data Quality Act

In developing this rule we did not conduct or use a study requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

List of Subjects in 43 CFR part 46

Environmental protection, EISs.

Dated: September 30, 2008.

James E. Cason,

Associate Deputy Secretary.

■ For the reasons given in the preamble, the Office of the Secretary is adding a new part 46 to Subtitle A of title 43 of the Code of Federal Regulations to read as follows:

PART 46—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

Subpart A—General Information

46.10 Purpose of this part.
46.20 How to use this part.
46.30 Definitions.

Subpart B—Protection and Enhancement of Environmental Quality

46.100 Federal action subject to the procedural requirements of NEPA.
46.105 Using a contractor to prepare environmental documents.
46.110 Incorporating consensus-based management.
46.115 Consideration of past actions in analysis of cumulative effects.
46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations.
46.125 Incomplete or unavailable information.
46.130 Mitigation measures in analyses.
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Authority: 42 U.S.C. 4321 *et seq.* (The National Environmental Policy Act of 1969, as amended); Executive Order 11514, (Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)); 40 CFR parts 1500–1508 (43 FR 55978) (National Environmental Policy Act, Implementation of Procedural Provisions).

Subpart A—General Information

§ 46.10 Purpose of this part.

(a) This part establishes procedures for the Department, and its constituent bureaus, to use for compliance with:

(1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); and

(2) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

(b) Consistent with 40 CFR 1500.3, it is the Department's intention that any trivial violation of these regulations will not give rise to any independent cause of action.

§ 46.20 How to use this part.

(a) This part supplements, and is to be used in conjunction with, the CEQ regulations except where it is inconsistent with other statutory requirements. The following table shows the corresponding CEQ regulations for the sections in subparts A—E of this part. Some sections in those subparts do not have a corresponding CEQ regulation.

Subpart A 40 CFR

46.10 Parts 1500–1508

46.20 No corresponding CEQ regulation
46.30 No corresponding CEQ regulation

Subpart B

46.100 1508.14, 1508.18, 1508.23
46.105 1506.5
46.110 No corresponding CEQ regulation
46.115 1508.7
46.120 1502.9, 1502.20, 1502.21, 1506.3
46.125 1502.22
46.130 1502.14
46.135 1502.21
46.140 1502.20
46.145 No corresponding CEQ regulation
46.150 1506.11
46.155 1502.25, 1506.2
46.160 1506.1
46.170 No corresponding CEQ regulation

Subpart C

46.200 1501.2
46.205 1508.4
46.210 1508.4
46.215 1508.4
46.220 1501.5
46.225 1501.6
46.230 1501.6
46.235 1501.7
46.240 1501.8

Subpart D

46.300 1501.3
46.305 1501.7, 1506.6
46.310 1508.9
46.315 No corresponding CEQ regulation
46.320 1506.3
46.325 1501.4

Subpart E

46.400 1502.5
46.405 1502.7
46.415 1502.10
46.420 1502.14
46.425 1502.14
46.430 1502.25
46.435 1503
46.440 1506.2
46.445 1506.8
46.450 1505.2

(b) The Responsible Official will ensure that the decision making process for proposals subject to this part includes appropriate NEPA review.

(c) During the decision making process for each proposal subject to this part, the Responsible Official shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and responses to those comments, as part of consideration of the proposal and, except as specified in paragraphs 46.210(a) through (j), shall include such documents, including supplements, comments, and responses as part of the administrative file.

(d) The Responsible Official's decision on a proposed action shall be within the range of alternatives discussed in the relevant environmental document. The Responsible Official's decision may combine elements of alternatives discussed in the relevant environmental document if the effects of such combined elements of alternatives are reasonably apparent from the analysis in the relevant environmental document.

(e) For situations involving an applicant, the Responsible Official should initiate the NEPA process upon acceptance of an application for a proposed Federal action. The Responsible Official must publish or otherwise provide policy information and make staff available to advise potential applicants of studies or other information, such as costs, foreseeably required for later Federal action.

§ 46.30 Definitions.

For purposes of this part, the following definitions supplement terms defined at 40 CFR parts 1500–1508.

Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

Bureau means bureau, office, service, or survey within the Department of the Interior.

Community-based training in the NEPA context is the training of local participants together with Federal participants in the workings of the environmental planning effort as it relates to the local community(ies).

Controversial refers to circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

Environmental Statement Memoranda (ESM) are a series of instructions issued by the Department's Office of Environmental Policy and Compliance to provide information and explanatory guidance in the preparation, completion, and circulation of NEPA documents.

Environmentally preferable alternative is the alternative required by 40 CFR 1505.2(b) to be identified in a record of decision (ROD), that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified upon consideration and weighing by the Responsible Official of long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, such as when different alternatives impact different resources to different degrees, there may be more than one environmentally preferable alternative.

No action alternative.

(1) This term has two interpretations. First ''no action'' may mean ''no change'' from a current management direction or level of management intensity (*e.g.*, if no ground-disturbance is currently underway, no action means no ground-disturbance). Second ''no action'' may mean ''no project'' in cases where a new project is proposed for implementation.

(2) The Responsible Official must determine the ''no action'' alternative consistent with one of the definitions in paragraph (1) of this definition and appropriate to the proposed action to be analyzed in an environmental impact statement. The no action alternative looks at effects of not approving the action under consideration.

Proposed action. This term refers to the bureau activity under consideration. It includes the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action:

(1) Is not necessarily, but may become, during the NEPA process, the bureau preferred alternative or (in a record of decision for an environmental impact statement, in accordance with 40 CFR 1505.2) an environmentally preferable alternative; and

(2) Must be clearly described in order to proceed with NEPA analysis.

Reasonably foreseeable future actions include those federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a Responsible Official of ordinary prudence would take such activities into account in reaching a decision. These federal and non-federal activities that must be taken into account in the analysis of cumulative impact include, but are not limited to, activities for which there are existing decisions, funding, or proposals identified by the

bureau. Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite.

Responsible Official is the bureau employee who is delegated the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA.

Subpart B—Protection and Enhancement of Environmental Quality

§ 46.100 Federal action subject to the procedural requirements of NEPA.

(a) A bureau proposed action is subject to the procedural requirements of NEPA if it would cause effects on the human environment (40 CFR 1508.14), and is subject to bureau control and responsibility (40 CFR 1508.18). The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval are necessary to implement it. If Federal funding is provided with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary. The proposed action is not subject to the procedural requirements of NEPA if it is exempt from the requirements of section 102(2) of NEPA.

(b) A bureau shall apply the procedural requirements of NEPA when the proposal is developed to the point that:

(1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal; and

(2) The effects of the proposed action can be meaningfully evaluated (40 CFR 1508.23).

§ 46.105 Using a contractor to prepare environmental documents.

A Responsible Official may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(b) and (c). If a Responsible Official uses a contractor, the Responsible Official remains responsible for:

(a) Preparation and adequacy of the environmental documents; and

(b) Independent evaluation of the environmental documents after their completion.

§ 46.110 Incorporating consensus-based management.

(a) Consensus-based management incorporates direct community involvement in consideration of bureau activities subject to NEPA analyses, from initial scoping to implementation of the bureau decision. It seeks to achieve agreement from diverse interests on the goals of, purposes of, and needs for bureau plans and activities, as well as the methods anticipated to carry out those plans and activities. For the purposes of this Part, consensus-based management involves outreach to persons, organizations or communities who may be interested in or affected by a proposed action with an assurance that their input will be given consideration by the Responsible Official in selecting a course of action.

(b) In incorporating consensus-based management in the NEPA process, bureaus should consider any consensus-based alternative(s) put forth by those participating persons, organizations or communities who may be interested in or affected by the proposed action. While there is no guarantee that any particular consensus-based alternative will be considered to be a reasonable alternative or be identified as the bureau's preferred alternative, bureaus must be able to show that the reasonable consensus-based alternative, if any, is reflected in the evaluation of the proposed action and discussed in the final decision. To be selected for implementation, a consensus-based alternative must be fully consistent with NEPA, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance.

(c) The Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process.

(d) If the Responsible Official determines that the consensus-based alternative, if any, is not the preferred alternative, he or she must state the reasons for this determination in the environmental document.

(e) When practicing consensus-based management in the NEPA process, bureaus must comply with all applicable laws, including any applicable provisions of the Federal Advisory Committee Act (FACA).

§ 46.115 Consideration of past actions in the analysis of cumulative effects.

When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with 40 CFR 1508.7 and in accordance with relevant guidance issued by the Council on Environmental Quality, such as ''The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis'' dated June 24, 2005, or any superseding Council on Environmental Quality guidance.

§ 46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations.

(a) When available, the Responsible Official should use existing NEPA analyses for assessing the impacts of a proposed action and any alternatives. Procedures for adoption or incorporation by reference of such analyses must be followed where applicable.

(b) If existing NEPA analyses include data and assumptions appropriate for the analysis at hand, the Responsible Official should use these existing NEPA analyses and/or their underlying data and assumptions where feasible.

(c) An existing environmental analysis prepared pursuant to NEPA and the Council on Environmental Quality regulations may be used in its entirety if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.

(d) Responsible Officials should make the best use of existing NEPA documents by supplementing, tiering to, incorporating by reference, or adopting previous NEPA environmental analyses to avoid redundancy and unnecessary paperwork.

§ 46.125 Incomplete or unavailable information.

In circumstances where the provisions of 40 CFR 1502.22 apply, bureaus must consider all costs to obtain information. These costs include monetary costs as well as other non-monetized costs when appropriate, such as social costs, delays, opportunity costs, and non-fulfillment or non-timely fulfillment of statutory mandates.

§ 46.130 Mitigation measures in analyses.

(a) Bureau proposed action. The analysis of the proposed action and any alternatives must include an analysis of the effects of the proposed action or alternative as well as analysis of the effects of any appropriate mitigation measures or best management practices that are considered. The mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

(b) Applicant proposals (*i.e.*, bureau decision-making on such proposals is the proposed action). An applicant's

proposal presented to the bureau for analysis must include any ameliorative design elements (including stipulations, conditions, or best management practices), required to make the proposal conform to applicable legal requirements, as well as any voluntary ameliorative design element(s). The effects of any mitigation measures other than the ameliorative design elements included in the applicant's proposal must also be analyzed. The analysis of these mitigation measures can be structured as a matter of consideration of alternatives to approving the applicant's proposal or as separate mitigation measures to be imposed on any alternative selected for implementation.

§ 46.135 Incorporation of referenced documents into NEPA analysis.

(a) The Responsible Official must determine that the analysis and assumptions used in the referenced document are appropriate for the analysis at hand.

(b) Citations of specific information or analysis from other source documents should include the pertinent page numbers or other relevant identifying information.

(c) Publications incorporated into NEPA analysis by reference must be listed in the bibliography. Such publications must be readily available for review and, when not readily available, they must be made available for review as part of the record supporting the proposed action.

§ 46.140 Using tiered documents.

A NEPA document that tiers to another broader NEPA document in accordance with 40 CFR 1508.28 must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions.

(a) Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary, and the previously prepared document can be used for purposes of the pending action.

(b) To the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.

(c) An environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. An environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered may also be called a ''finding of no *new* significant impact.''

§ 46.145 Using adaptive management.

Bureaus should use adaptive management, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make adjustments in subsequent implementation decisions. The NEPA analysis conducted in the context of an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.

§ 46.150 Emergency responses.

This section applies only if the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part.

(a) The Responsible Official may take those actions necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of these actions and mitigate foreseeable adverse environmental effects to the extent practical.

(b) The Responsible Official shall document in writing the determination that an emergency exists and describe the responsive action(s) taken at the time the emergency exists. The form of that documentation is within the discretion of the Responsible Official.

(c) If the Responsible Official determines that proposed actions taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an environmental assessment and a finding of no significant impact prepared in accordance with this part, unless categorically excluded (see subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an environmental assessment and a finding of no significant impact, the Responsible Official shall consult with the Office of Environmental Policy and Compliance about alternative arrangements for NEPA compliance. The Assistant Secretary, Policy Management and Budget or his/her designee may grant an alternative arrangement. Any alternative arrangement must be documented. Consultation with the Department must be coordinated through the appropriate bureau headquarters.

(d) The Department shall consult with CEQ about alternative arrangements as soon as possible if the Responsible Official determines that proposed actions, taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are likely to have significant environmental impacts. The Responsible Official shall consult with appropriate bureau headquarters and the Department, about alternative arrangements as soon as the Responsible Official determines that the proposed action is likely to have a significant environmental effect. Such alternative arrangements will apply only to the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this part.

§ 46.155 Consultation, coordination, and cooperation with other agencies.

The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities.

§ 46.160 Limitations on actions during the NEPA analysis process.

During the preparation of a program or plan NEPA document, the Responsible Official may undertake any

major Federal action in accordance with 40 CFR 1506.1 when that action is within the scope of, and analyzed in, an existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

§ 46.170 Environmental effects abroad of major Federal actions.

(a) In order to facilitate informed decision-making, the Responsible Official having ultimate responsibility for authorizing and approving proposed actions encompassed by the provisions of Executive Order (EO) 12114 shall follow the provisions and procedures of that EO. EO 12114 ''represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.''

(b) When implementing EO 12114, bureaus shall coordinate with the Department. The Department shall then consult with the Department of State, which shall coordinate all communications by the Department with foreign governments concerning environmental agreements and other arrangements in implementing EO 12114.

Subpart C—Initiating the NEPA Process

§ 46.200 Applying NEPA early.

(a) For any potentially major proposed Federal action (40 CFR 1508.23 and 1508.18) that may have potentially significant environmental impacts, bureaus must coordinate, as early as feasible, with:

(1) Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and

(2) Appropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment.

(b) Bureaus must solicit the participation of all those persons or organizations that may be interested or affected as early as possible, such as at the time an application is received or when the bureau initiates the NEPA process for a proposed action.

(c) Bureaus should provide, where practicable, any appropriate community-based training to reduce costs, prevent delays, and facilitate and promote efficiency in the NEPA process.

(d) Bureaus should inform private or non-Federal applicants, to the extent feasible, of:

(1) Any appropriate environmental information that the applicants must include in their applications; and

(2) Any consultation with other Federal agencies, or State, local, or tribal governments that the applicant must accomplish before or during the application process.

(e) Bureaus must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals.

§ 46.205 Actions categorically excluded from further NEPA review.

Categorical Exclusion means a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4.

(a) Except as provided in paragraph (c) of this section, if an action is covered by a Departmental categorical exclusion, the bureau is not required to prepare an environmental assessment (see subpart D of this part) or an environmental impact statement (see subpart E of this part). If a proposed action does not meet the criteria for any of the listed Departmental categorical exclusions or any of the individual bureau categorical exclusions, then the proposed action must be analyzed in an environmental assessment or environmental impact statement.

(b) The actions listed in section 46.210 are categorically excluded, Department-wide, from preparation of environmental assessments or environmental impact statements.

(c) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis and action. Section 46.215 lists the extraordinary circumstances under which actions otherwise covered by a categorical exclusion require analyses under NEPA.

(1) Any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215; if it does, further analysis and environmental documents must be prepared for the action.

(2) Bureaus must work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the section 46.215 extraordinary circumstances.

(d) Congress may establish categorical exclusions by legislation, in which case the terms of the legislation determine how to apply those categorical exclusions.

§ 46.210 Listing of Departmental categorical exclusions.

The following actions are categorically excluded under paragraph 46.205(b), unless any of the extraordinary circumstances in section 46.215 apply:

(a) Personnel actions and investigations and personnel services contracts.

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

(e) Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

(f) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (*e.g.*, limited size and magnitude or short-term effects).

(g) Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

(h) Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal,

technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

(j) Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

(k) Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) Shall be identified through a collaborative framework as described in ''A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;''

(3) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the ESM Series for additional, required guidance.)

(l) Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):

(1) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(2) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(3) Shall be completed within three years following a wildland fire.

§ 46.215 Categorical Exclusions: Extraordinary circumstances.

Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).

(k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).

(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

§ 46.220 How to designate lead agencies.

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the NEPA document will meet their needs for adoption and application to their related decision(s).

(b) In some cases, a non-Federal agency (including a tribal government) must comply with State or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency. (See 40 CFR 1501.5 and 1506.2 for a description of the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies.)

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there is a joint lead, then one Federal agency must be identified as the agency responsible for filing the environmental impact statement with EPA.

§ 46.225 How to select cooperating agencies.

(a) An ''eligible governmental entity'' is:

(1) Any Federal agency that is qualified to participate in the development of an environmental impact statement as provided for in 40 CFR 1501.6 and 1508.5 by virtue of its jurisdiction by law, as defined in 40 CFR 1508.15;

(2) Any Federal agency that is qualified to participate in the development of an environmental impact statement by virtue of its special expertise, as defined in 40 CFR 1508.26; or

(3) Any non-Federal agency (State, tribal, or local) with qualifications similar to those in paragraphs (a)(1) and (a)(2) of this section.

(b) Except as described in paragraph (c) of this section, the Responsible Official for the lead bureau must invite eligible governmental entities to participate as cooperating agencies

when the bureau is developing an environmental impact statement.

(c) The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(d) Bureaus should work with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Memoranda of understanding must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of any NEPA document, including drafts.

(e) The procedures of this section may be used for an environmental assessment.

§ 46.230 Role of cooperating agencies in the NEPA process.

In accordance with 40 CFR 1501.6, throughout the development of an environmental document, the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:

(a) Identify issues to be addressed;

(b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;

(c) Analyze data;

(d) Develop alternatives;

(e) Evaluate alternatives and estimate the effects of implementing each alternative; and

(f) Carry out any other task necessary for the development of the environmental analysis and documentation.

§ 46.235 NEPA scoping process.

(a) Scoping is a process that continues throughout the planning and early stages of preparation of an environmental impact statement. Scoping is required for an environmental impact statement; scoping may be helpful during preparation of an environmental assessment, but is not required (see paragraph 46.305(a) Public involvement in the environmental assessment process). For an environmental impact statement, bureaus must use scoping to engage State, local and tribal governments and the public in the early identification of concerns, potential impacts, relevant effects of past actions and possible alternative actions. Scoping is an opportunity to introduce and explain the interdisciplinary approach and solicit information as to additional disciplines that should be included. Scoping also provides an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process. The Responsible Official shall determine whether, in some cases, the invitation requirement in 40 CFR 1501.7(a)(1) may be satisfied by including such an invitation in the notice of intent (NOI).

(b) In scoping meetings, newsletters, or by other communication methods appropriate to scoping, the lead agency must make it clear that the lead agency is ultimately responsible for determining the scope of an environmental impact statement and that suggestions obtained during scoping are only options for the bureau to consider.

§ 46.240 Establishing time limits for the NEPA process.

(a) For each proposed action, on a case-by-case basis, bureaus shall:

(1) Set time limits from the start to the finish of the NEPA analysis and documentation, consistent with the requirements of 40 CFR 1501.8 and other legal obligations, including statutory and regulatory timeframes;

(2) Consult with cooperating agencies in setting time limits; and

(3) Encourage cooperating agencies to meet established time frames.

(b) Time limits should reflect the availability of Department and bureau personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which must assemble an interdisciplinary team and/or qualified staff appropriate to the type of project to be analyzed to ensure timely completion of NEPA documents.

Subpart D—Environmental Assessments

§ 46.300 Purpose of an environmental assessment and when it must be prepared.

The purpose of an environmental assessment is to allow the Responsible Official to determine whether to prepare an environmental impact statement or a finding of no significant impact.

(a) A bureau must ensure that an environmental assessment is prepared for all proposed Federal actions, except those:

(1) That are covered by a categorical exclusion;

(2) That are covered sufficiently by an earlier environmental document as determined and documented by the Responsible Official; or

(3) For which the bureau has already decided to prepare an environmental impact statement.

(b) A bureau may prepare an environmental assessment for any proposed action at any time to:

(1) Assist in planning and decision-making;

(2) Further the purposes of NEPA when no environmental impact statement is necessary; or

(3) Facilitate environmental impact statement preparation.

§ 46.305 Public involvement in the environmental assessment process.

(a) The bureau must, to the extent practicable, provide for public notification and public involvement when an environmental assessment is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the Responsible Official.

(1) The bureau must consider comments that are timely received, whether specifically solicited or not.

(2) Although scoping is not required, the bureau may apply a scoping process to an environmental assessment.

(b) Publication of a ''draft'' environmental assessment is not required. Bureaus may seek comments on an environmental assessment if they determine it to be appropriate, such as when the level of public interest or the uncertainty of effects warrants, and may revise environmental assessments based on comments received without need of initiating another comment period.

(c) The bureau must notify the public of the availability of an environmental assessment and any associated finding of no significant impact once they have been completed. Comments on a finding of no significant impact do not need to be solicited, except as required by 40 CFR 1501.4(e)(2).

(d) Bureaus may allow cooperating agencies (as defined in § 46.225) to participate in developing environmental assessments.

§ 46.310 Contents of an environmental assessment.

(a) At a minimum, an environmental assessment must include brief discussions of:

(1) The proposal;

(2) The need for the proposal;

(3) The environmental impacts of the proposed action;

(4) The environmental impacts of the alternatives considered; and

(5) A list of agencies and persons consulted.

(b) When the Responsible Official determines that there are no unresolved conflicts about the proposed action with respect to alternative uses of available resources, the environmental assessment need only consider the proposed action and does not need to consider additional alternatives, including the no action alternative. (See section 102(2)(E) of NEPA).

(c) In addition, an environmental assessment may describe a broader range of alternatives to facilitate planning and decision-making.

(d) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(e) The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

(f) Bureaus may choose to provide additional detail and depth of analysis as appropriate in those environmental assessments prepared under paragraph 46.300(b).

(g) An environmental assessment must contain objective analyses that support conclusions concerning environmental impacts.

§ 46.315 How to format an environmental assessment.

(a) An environmental assessment may be prepared in any format useful to facilitate planning, decision-making, and appropriate public participation.

(b) An environmental assessment may be accompanied by any other planning or decision-making document. The portion of the document that analyzes the environmental impacts of the proposal and alternatives must be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

§ 46.320 Adopting environmental assessments prepared by another agency, entity, or person.

(a) A Responsible Official may adopt an environmental assessment prepared by another agency, entity, or person, including an applicant, if the Responsible Official:

(1) Independently reviews the environmental assessment; and

(2) Finds that the environmental assessment complies with this subpart and relevant provisions of the CEQ Regulations and with other program requirements.

(b) When appropriate, the Responsible Official may augment the environmental assessment to be consistent with the bureau's proposed action.

(c) In adopting or augmenting the environmental assessment, the Responsible Official will cite the original environmental assessment.

(d) The Responsible Official must ensure that its bureau's public involvement requirements have been met before it adopts another agency's environmental assessment.

§ 46.325 Conclusion of the environmental assessment process.

Upon review of the environmental assessment by the Responsible Official, the environmental assessment process concludes with one of the following:

(1) A notice of intent to prepare an environmental impact statement;

(2) A finding of no significant impact; or

(3) A result that no further action is taken on the proposal.

Subpart E—Environmental Impact Statements

§ 46.400 Timing of environmental impact statement development.

The bureau must prepare an environmental impact statement for each proposed major Federal action significantly affecting the quality of the human environment before making a decision on whether to proceed with the proposed action.

§ 46.405 Remaining within page limits.

To the extent possible, bureaus should use techniques such as incorporation of referenced documents into NEPA analysis (46.135) and tiering (46.140) in an effort to remain within the normal page limits stated in 40 CFR 1502.7.

§ 46.415 Environmental impact statement content, alternatives, circulation and filing requirements.

The Responsible Official may use any environmental impact statement format and design as long as the statement is in accordance with 40 CFR 1502.10.

(a) *Contents.* The environmental impact statement shall disclose:

(1) A statement of the purpose and need for the action;

(2) A description of the proposed action;

(3) The environmental impact of the proposed action;

(4) A brief description of the affected environment;

(5) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(6) Alternatives to the proposed action;

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(8) Any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(9) The process used to coordinate with other Federal agencies, State, tribal and local governments, and persons or organizations who may be interested or affected, and the results thereof.

(b) *Alternatives.* The environmental impact statement shall document the examination of the range of alternatives (paragraph 46.420(c)). The range of alternatives includes those reasonable alternatives (paragraph 46.420(b)) that meet the purpose and need of the proposed action, and address one or more significant issues (40 CFR 1501.7(a)(2–3)) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements in 40 CFR 1502.14, the Responsible Official has an option to use the following procedures to develop and analyze alternatives.

(1) The analysis of the effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) The Responsible Official may collaborate with those persons or organization that may be interested or affected to modify a proposed action and alternative(s) under consideration prior to issuing a draft environmental impact statement. In such cases the Responsible Official may consider these

modifications as alternatives considered. Before engaging in any collaborative processes, the Responsible Official must consider the Federal Advisory Committee Act (FACA) implications of such processes.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(c) *Circulating and filing draft and final environmental impact statements.* (1) The draft and final environmental impact statements shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 ''Filing requirements,'' 40 CFR 1506.10 ''Timing of agency action,'' 40 CFR 1502.9 ''Draft, final, and supplemental statements,'' and 40 CFR 1502.19 ''Circulation of the environmental impact statement'' shall only apply to draft, final, and supplemental environmental impact statements that are filed with EPA.

§ 46.420 Terms used in an environmental impact statement.

The following terms are commonly used to describe concepts or activities in an environmental impact statement:

(a) *Statement of purpose and need.* In accordance with 40 CFR 1502.13, the statement of purpose and need briefly indicates the underlying purpose and need to which the bureau is responding.

(1) In some instances it may be appropriate for the bureau to describe its ''purpose'' and its ''need'' as distinct aspects. The ''need'' for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The ''purpose'' may refer to the goal or objective that the bureau is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.

(2) When a bureau is asked to approve an application or permit, the bureau should consider the needs and goals of the parties involved in the application or permit as well as the public interest. The needs and goals of the parties involved in the application or permit may be described as background information. However, this description must not be confused with the bureau's purpose and need for action. It is the bureau's purpose and need for action that will determine the range of alternatives and provide a basis for the selection of an alternative in a decision.

(b) *Reasonable alternatives.* In addition to the requirements of 40 CFR 1502.14, this term includes alternatives that are technically and economically practical or feasible and meet the purpose and need of the proposed action.

(c) *Range of alternatives.* This term includes all reasonable alternatives, or when there are potentially a very large number of alternatives then a reasonable number of examples covering the full spectrum of reasonable alternatives, each of which must be rigorously explored and objectively evaluated, as well as those other alternatives that are eliminated from detailed study with a brief discussion of the reasons for eliminating them. 40 CFR 1502.14. The Responsible Official must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents, but may select elements from several alternatives discussed. Moreover, the Responsible Official must, in fact, consider all the alternatives discussed in an environmental impact statement. 40 CFR 1505.1 (e).

(d) *Preferred alternative.* This term refers to the alternative which the bureau believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the bureau's proposed action, the non-Federal entity's proposal or the environmentally preferable alternative.

§ 46.425 Identification of the preferred alternative in an environmental impact statement.

(a) Unless another law prohibits the expression of a preference, the draft environmental impact statement should identify the bureau's preferred alternative or alternatives, if one or more exists.

(b) Unless another law prohibits the expression of a preference, the final environmental impact statement must identify the bureau's preferred alternative.

§ 46.430 Environmental review and consultation requirements.

(a) Any environmental impact statement that also addresses other environmental review and consultation requirements must clearly identify and discuss all the associated analyses, studies, or surveys relied upon by the bureau as a part of that review and consultation. The environmental impact statement must include these associated analyses, studies, or surveys, either in the text or in an appendix or indicate where such analysis, studies or surveys may be readily accessed by the public.

(b) The draft environmental impact statement must list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. The environmental analyses for these related permits, licenses, and approvals should be integrated and performed concurrently. The bureau, however, need not unreasonably delay its NEPA analysis in order to integrate another agency's analyses. The bureau may complete the NEPA analysis before all approvals by other agencies are in place.

§ 46.435 Inviting comments.

(a) A bureau must seek comment from the public as part of the Notice of Intent to prepare an environmental impact statement and notice of availability for a draft environmental impact statement;

(b) In addition to paragraph (a) of this section, a bureau must request comments from:

(1) Federal agencies;

(2) State agencies through procedures established by the Governor of such state under EO 12372;

(3) Local governments and agencies, to the extent that the proposed action affects their jurisdictions; and

(4) The applicant, if any, and persons or organizations who may be interested or affected.

(c) The bureau must request comments from the tribal governments, unless the tribal governments have designated an alternate review process, when the proposed action may affect the environment of either:

(1) Indian trust or restricted land; or

(2) Other Indian trust resources, trust assets, or tribal health and safety.

(d) A bureau does not need to delay preparation and issuance of a final environmental impact statement when any Federal, State, and local agencies, or tribal governments from which comments must be obtained or requested do not comment within the prescribed time period.

§ 46.440 Eliminating duplication with State and local procedures.

A bureau must incorporate in its directives provisions allowing a State agency to jointly prepare an environmental impact statement, to the extent provided in 40 CFR 1506.2.

§ 46.445 Preparing a legislative environmental impact statement.

When required under 40 CFR 1506.8, the Department must ensure that a legislative environmental impact statement is included as a part of the formal transmittal of a legislative proposal to the Congress.

§ 46.450 Identifying the environmentally preferable alternative(s).

In accordance with the requirements of 40 CFR 1505.2, a bureau must identify the environmentally preferable alternative(s) in the record of decision. It is not necessary that the environmentally preferable alternative(s) be selected in the record of decision.

[FR Doc. E8–23474 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–RG–P

You have requested guidance regarding an invitation from the Colorado Oil and Gas Association (COGA) to be a keynote speaker at their 2017 Annual Conference (Energy Summit) in the event you are confirmed by the Senate. The Energy Summit will be held in Denver, CO, on August 22-24, 2017.

The invitation letter is signed by Sarah Sundberg, Chief Operating Officer, COGA; David Posner, President, EnVent Energy (EnVent), LLC, Conference Co-Chair; and Chip Rimer, Senior Vice President, U.S. Onshore, Noble Energy, Inc. (Noble), Conference Co-Chair.[1] EnVent is listed as a "High Plains" sponsor[2] of the event and Noble is listed as a "Fourteener" sponsor.[3]

You indicated that your law firm, Brownstein Hyatt Farber Schreck, LLP, is not a sponsor of the conference. However, on its website, COGA lists the firm as a Foothills sponsor.[4]

You indicated that COGA is a former client of your law firm but that you did not serve COGA personally as an agent, attorney, or consultant. You also indicated that COGA is not a former employer.[5] You indicated the Noble Energy is not a former employer but is a former client for whom you personally provided services. You indicated that EnVent is neither a former employer nor a former client for whom you personally provided services.

If confirmed and as reflected in your ethics agreement, you will have certain ethics restrictions regarding your former employer and clients. These restrictions are both regulatory and in accordance with the Ethics Pledge for Political Appointees, Executive Order No. 13770, Ethics Commitments by Executive Branch Employees.

5 C.F.R. § 2635.502[6]

The Office of Government Ethics (OGE) generally has viewed the decision to give an official speech as a particular matter involving the event sponsor as a specific party. As such, if you have a covered relationship with the sponsor—for example, you have, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee of the sponsor—you may not, absent authorization, present an official speech at the event.[7] Moreover, even if you do not have a covered relationship with the sponsor of the

[1] David Posner is listed on the COGA website as an Executive Board Member and Chip Rimer is listed as a COGA Board Officer (Secretary).
[2] A "High Plains" sponsor contributes $1,000 to the event in exchange for certain conference-related benefits.
[3] A "Fourteener" sponsor contributes $14,000 to the event in exchange for certain conference-related benefits.
[4] A "Foothills" sponsor contributes $3,000 to the event in exchange for certain conference-related benefits.
[5] COGA would be a former employer if you served them as an employee, officer, director, trustee, or general partner.
[6] This advice assumes that you have no financial interest (direct or imputed) that could implicate the applicability of the criminal conflict of interest statute, 18 U.S.C. § 208.
[7] For PAS officials, OGE does not incorporate the reasonable person test when a former employer or former client is or represents a party to a matter.

event, if you are nevertheless concerned that the circumstances would raise a concern about your impartiality in deciding whether to speak at the COGA event, you should not, absent authorization, make that decision or participate in the official speech.

Based upon your representations, you do not appear to have a covered relationship with either COGA or EnVent. You do have a covered relationship with Noble because you served them as an attorney in the last year. However, if Noble is not considered a sponsor of the event, the restriction in 5 C.F.R. § 2635.502 would not apply because Noble would neither be nor represent a party to the matter.

To the extent that Noble is merely providing financial support to the event, it would not be considered a sponsor of the event and 5 C.F.R. § 2635.502 would not be implicated.[8] If, on the other hand, Noble is actively organizing, planning, and conducting the event, e.g., determining the topics to be discussed, the intended audience, the agenda, the speakers, the date, or the location for the event, this could lead to a finding that Noble is a sponsor of (and thus a party to) the event and implicate 5 C.F.R. § 2635.502. We would need additional information regarding Noble's participation in the event in order to accurately determine their role. With your permission, we could contact them to request this information.

Please remember, however, that even if Noble is not a sponsor of the event, if other circumstances exist that would cause a reasonable person to question your impartiality in this matter, 5 C.F.R. § 2635.502 would prohibit you from presenting an official speech at the Energy Summit, absent authorization from an appropriate official.

Ethics Pledge for Political Appointees

Under paragraph 6 of the Ethics Pledge, you may not, for two years after your date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients if you served that employer or client during the two-year period prior to your date of appointment. A former client does not include a client of your former employer to whom you did not personally provide services. For example, if your law firm provided legal services to a corporation, the corporation is not your former client for the purposes of the Pledge if you did not personally render legal services to the corporation.

Based upon your representations, neither COGA nor EnVent is a former employer or client for purposes of the Ethics Pledge. Noble is not a former employer but is a former client for purposes of the Pledge. As with 5 C.F.R. § 2635.502 above, to the extent that Noble is

[8] To the extent that Mr. Rimer is serving as Conference Co-Chair in his capacity as a member of the COGA Board, rather than in his capacity as a Noble Senior Vice President, we do not believe that this activity would lead to a finding that Noble is a sponsor of the event.

merely providing financial support to the event, it would not be considered a sponsor of (party to) the event and the Pledge would not be implicated. If Noble is a sponsor of (and thus a party to) the event, this would implicate the Pledge restriction. We would need additional information regarding Noble's participation in the event in order to accurately determine their role. With your permission, we could contact them to request this information.

OGE has examined the question of whether this portion of the Pledge prohibits an appointee from giving an official speech at an event sponsored by a former employer or client. OGE opined that the Pledge is not intended to prohibit an appointee from participating in an official speech unless the speech would have a demonstrable financial effect on the former employer or client. OGE further clarified that the sponsor of an event will have a financial interest in an official speech only if a fee is charged , the event is a fundraiser, or the event is some kind of business development activity (such as a seminar for current or prospective clients).

In this instance, while a fee is charged to attend the Energy Summit, Paragraph 6 of the Pledge would not apply unless Noble is found to be a sponsor of the event. If Noble is found to be a sponsor of the event, the Pledge would prohibit you from presenting an official speech.

If you are permitted to provide an official speech at the COGA event, you may accept "free attendance" from COGA on the day of your presentation. This is not considered a gift to you or the agency. Free attendance includes a waiver of all or part of the fee for an event or the provision of food, refreshments, entertainment, instruction or materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, or entertainment collateral to the event. It does not include meals taken other than in a group setting with all other attendees, unless you are a presenter at the event and are invited to a separate meal for participating presenters that is hosted by the sponsor of the event.

Any other gifts offered, such as a gift of travel benefits or free attendance on the day you are not presenting information on behalf of the agency, must be analyzed separately.

Hi David,

Melinda, Dave Lacroix, and I worked on this matter.

Issue

Whether you may be a keynote speaker at the Colorado Oil and Gas Association (COGA) 2017 Annual Conference (Energy Summit), to be held in Denver, CO, on August 22-24, 2017.

Conclusion

I believe that both 5 C.F.R. § 2635.502 and the administration ethics pledge prohibit you from being a keynote speaker at the event.

General Background

The invitation letter to you is signed by Sarah Sundberg, Chief Operating Officer, COGA; David Posner, President, EnVent Energy (EnVent), LLC, Conference Co-Chair; and Chip Rimer, Senior Vice President, U.S. Onshore, Noble Energy, Inc. (Noble), Conference Co-Chair.[1]

On the Summit website, EnVent is listed as a "High Plains" sponsor[2] of the event and Noble is listed as a "Fourteener" sponsor.[3]

COGA is a former client of your law firm but you did not serve COGA personally as an agent, attorney, or consultant. COGA is not a former employer.[4]

Noble Energy is not a former employer but is a former client for whom you personally provided services.

EnVent is neither a former employer nor a former client for whom you personally provided services.

I have confirmed with the Conference Director at COGA (COGA representative) that your former law firm, Brownstein Hyatt Farber Schreck, LLP, is not a sponsor of the conference. While the program book for the Energy Summit lists the firm as an "eagle" sponsor for the Annual COGA Golf Tournament (for COGA members only), the tournament is scheduled to be held the day before the Summit begins, at a venue approximately 39 miles from the Summit venue. Additionally, the COGA representative stated that the only way to participate in the golf tournament is to be a "sponsor" of the tournament and your former firm has a foursome playing, there is no speaking engagement at the tournament, and tournament participation does not entitle one to access or benefits for the Summit. Under these circumstances, I do not believe that the firm's participation in or sponsorship of the golf tournament constitutes sponsorship of the Summit.

Mr. Rimer was a co-chair of last year's Summit as well.

5 C.F.R. § 2635.502[5]

The Office of Government Ethics (OGE) generally has viewed the decision to give an official speech as a particular matter involving the event sponsor as a specific party. As such, if you have a covered relationship with an event sponsor—for example, you have, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee of the sponsor—you may not, absent authorization, present an official speech at the event.[6] Moreover, even if you do not have a covered relationship with the sponsor of the event, if you are nevertheless concerned that the circumstances would raise a concern about your impartiality in deciding whether to speak at the COGA event, you should not, absent authorization, make that decision or participate in the official speech.

Based upon your representations, you do not appear to have a covered relationship with either COGA or EnVent.

You do have a covered relationship with Noble because you served them as an attorney in the last year. Therefore, if Noble is considered a sponsor of the event, the restriction in 5 C.F.R. § 2635.502 would apply because Noble would be a party to the matter.

If Noble were merely providing financial support to the event, it would not be considered a sponsor of the event and 5 C.F.R. § 2635.502 would not be implicated.[7] If, on the other hand, Noble participates in actively organizing, planning, and conducting the event, e.g., determining the topics to be discussed, the intended audience, the agenda, the speakers, the date, or the location for the event, this could lead to a finding that Noble is a sponsor of (and thus a party to) the event and implicate 5 C.F.R. § 2635.502.

When I asked the COGA representative about Noble's participation in the event, she indicated that Mr. Rimer, along with her and the steering committee, helped plan the Summit.

In her Letter from the Conference Director in the Program Book for the Summit, the COGA representative states, "Our steering committee, led by Chip Rimer and David Posner, has gathered industry thought leaders who will test our assumptions, reframe our challenges, and discuss solutions and outcomes to industry's most pressing issues."

Mr. Rimer's position as Co-Chair and/or his position with Noble are included on seven pages of the Program Book.

At the Summit, Mr. Rimer will be giving "bumper remarks," which consist of introducing moderators and opening a session. He will not, however, be participating as a moderator, panelist, or keynote at any point throughout the event.

Mr. Rimer's welcome letter will be included in the Program Book, along with five other letters. These books are handed out onsite in hard copy and are not available in any other format, or at any other event.

Mr. Rimer will be recognized as Co-Chair, along with David Posner of EnVent Energy on Tuesday of the conference. The Conference Director will give some brief remarks of appreciation and ask him and David to come on stage to receive a small trinket.

Again, this is Mr. Rimer's second year acting as a Co-Chair.

In my opinion, based on Mr. Rimer's participation in the organization, planning, and conduct of the event, Noble is a sponsor of the Summit and, accordingly, 5 C.F.R. § 2635.502 would prohibit your participation.

Administration Ethics Pledge

Under paragraph 6 of the Ethics Pledge, you may not, for two years after your date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients if you served that employer or client during the two-year period prior to your date of appointment. A former client does not include a client of your former employer to whom you did not personally provide services. For example, if your law firm provided legal services to a corporation, the corporation is not your former client for the purposes of the Pledge if you did not personally render legal services to the corporation.

Based upon your representations, neither COGA nor EnVent is a former employer or client for purposes of the Ethics Pledge.

Noble is not a former employer but is a former client for purposes of the Pledge. As determined above, I believe that Noble is a sponsor of (and thus a party to) the event.

OGE has examined the question of whether this portion of the Pledge prohibits an appointee from giving an official speech at an event sponsored by a former employer or client. OGE opined that the Pledge is not intended to prohibit an appointee from participating in an official speech unless the speech would have a demonstrable financial effect on the former employer or client. OGE further clarified that the sponsor of an event will have a financial interest in an official speech only if a fee is charged, the event is a fundraiser, or the event is some kind of business development activity (such as a seminar for current or prospective clients).

In this instance, a fee is charged to attend the Energy Summit, of which Noble is a sponsor. Accordingly, the Pledge would prohibit you from presenting an official speech.

Conclusion

Based on the above analysis, I believe that both 5 C.F.R. § 2635.502 and the administration ethics pledge prohibit you from being a keynote speaker at the event.

Please let me know if you have any questions or would care to discuss.

Thanks very much,
Ed

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[1] David Posner is listed on the COGA website as an Executive Board Member and Chip Rimer is listed as a COGA Board Officer (Secretary).

[2] A "High Plains" sponsor contributes $1,000 to the event in exchange for certain conference-related benefits.

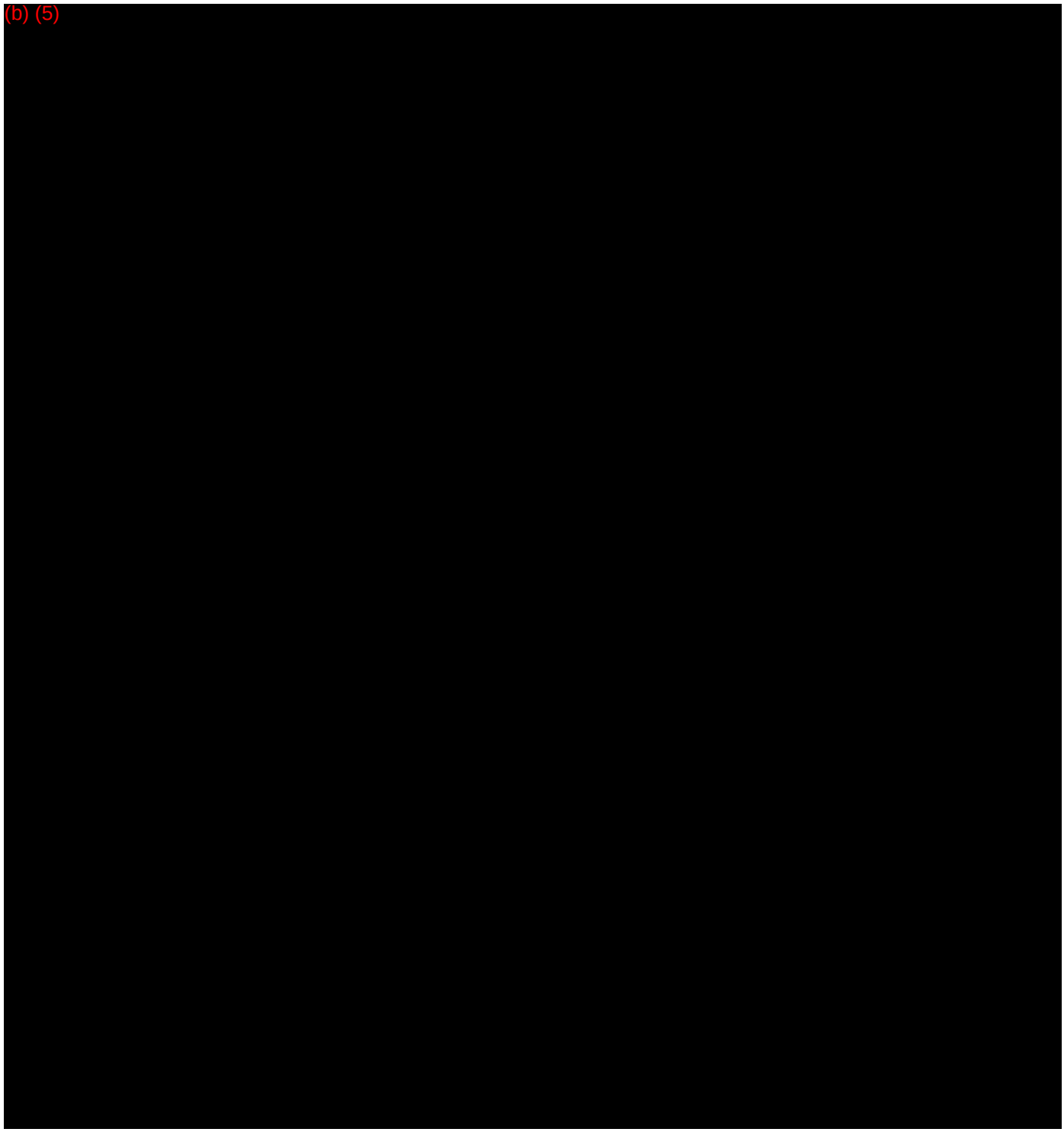
[3] A "Fourteener" sponsor contributes $14,000 to the event in exchange for certain conference-related benefits.

[4] COGA would be a former employer if you served them as an employee, officer, director, trustee, or general partner.

[5] This advice assumes that you have no financial interest (direct or imputed) that could implicate the applicability of the criminal conflict of interest statute, 18 U.S.C. § 208.

[6] For PAS officials, OGE does not incorporate the reasonable person test when a former employer or former client is or represents a party to a matter.

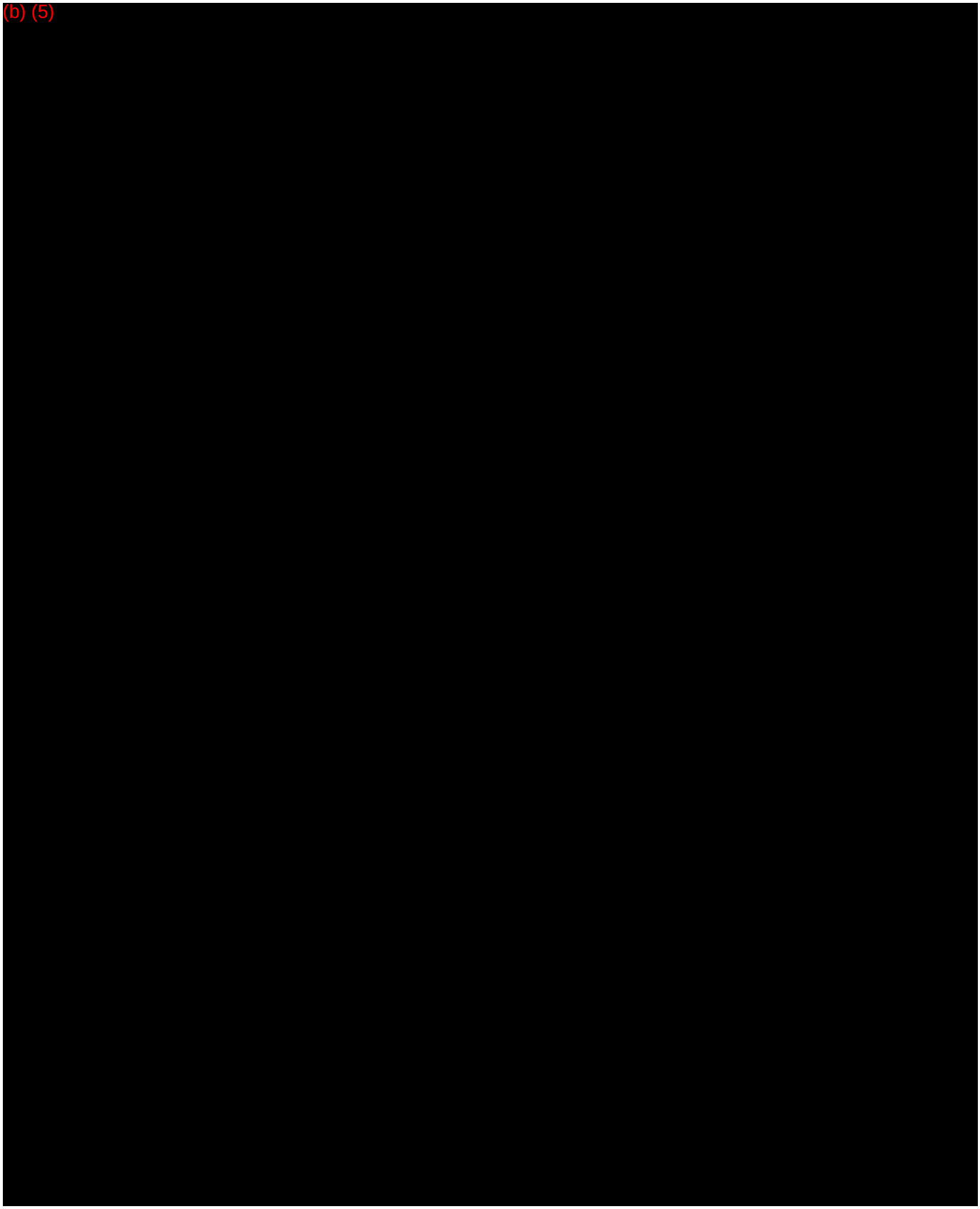
[7] To the extent that Mr. Rimer is serving as Conference Co-Chair in his capacity as a member of the COGA Board, rather than in his capacity as a Noble Senior Vice President, we do not believe that this activity would lead to a finding that Noble is a sponsor of the event.

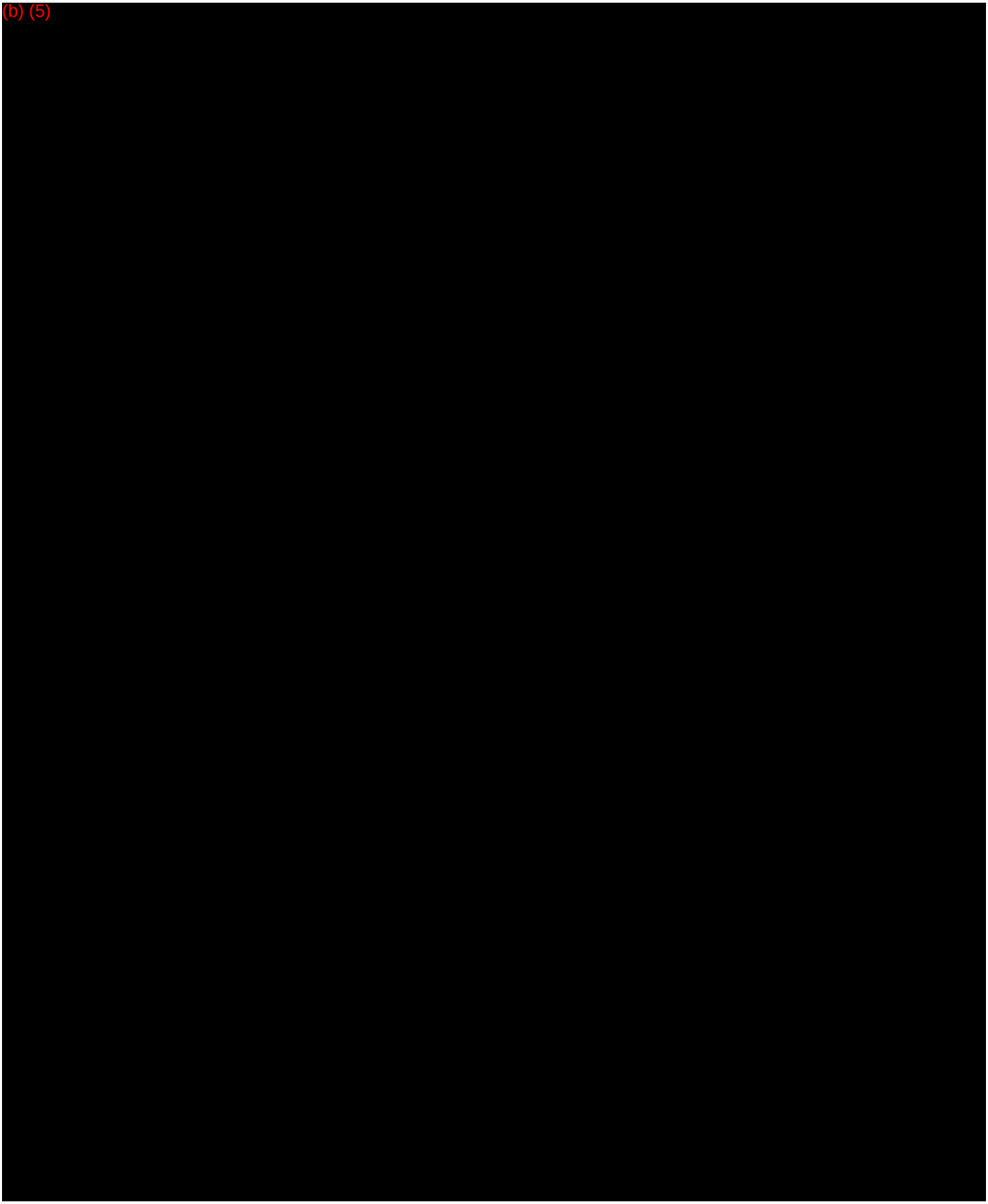

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(b) (5)

Hi David,

(b) (5)




(b) (5)



DRAFT

Label: "SOL FOIA 2018 - 00129"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:14 AM

Conversation Contents

Tour of Dry Tortugas National Park

"Rees, Gareth" <gareth_rees@ios.doi.gov>

From:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
Sent:	Mon Mar 26 2018 11:25:09 GMT-0600 (MDT)
To:	Jennifer Heindl <jennifer.heindl@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Tour of Dry Tortugas National Park

Good Afternoon,

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1730 End of day's activities

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Ce (b) (6)

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Mar 26 2018 11:47:17 GMT-0600 (MDT)
To:	"Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>, Scott Currie <scott.currie@sol.doi.gov>, Matthew Parsons <matthew.parsons@sol.doi.gov>
Subject:	Fwd: Tour of Dry Tortugas National Park

All,

May we please discuss this later this afternoon?

Thanks,
Ed

- Stewardship for America with Integrity and Excellence -

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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From: **Rees, Gareth** <gareth_rees@ios.doi.gov>
Date: Mon, Mar 26, 2018 at 1:25 PM
Subject: Tour of Dry Tortugas National Park
To: Jennifer Heindl <jennifer.heindl@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Mar 26 2018 11:48:11 GMT-0600 (MDT)
To:	"Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>, Scott Currie <scott.currie@sol.doi.gov>, Matthew Parsons <matthew.parsons@sol.doi.gov>, "Connors, Margaret" <margaret.connors@sol.doi.gov>, Kimberly L Benton <Kimberly.Benton@sol.doi.gov>
Subject:	Re: Tour of Dry Tortugas National Park

Adding Kim B and Markee.

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On Mon, Mar 26, 2018 at 1:47 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

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Office to the Deputy Secretary

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Tel: 202-208-6291

Fax: 202-208-1873

Ce (b) (6) [redacted]

"Spector, Rachel" <rachel.spector@sol.doi.gov>

From:	"Spector, Rachel" <rachel.spector@sol.doi.gov>
Sent:	Tue Mar 27 2018 15:19:16 GMT-0600 (MDT)
To:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
CC:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>, "Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>
Subject:	Re: Tour of Dry Tortugas National Park

Hi Gareth:

Jennifer and I discussed the matter wit (b) (5) [redacted]

Please let us know if you want to discuss it further. I've also cc'ed the Ethics Office in case they have any concerns.

Thanks,

Rachel

Rachel Spector
Division of General Law
Office of the Solicitor
U.S. Department of the Interior
(202) 208-6029

On Tue, Mar 27, 2018 at 10:15 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> Hi Rachel
>
> Could you have a quick look at the email below and let me know if there are any issues? Happy to discuss.
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> Gareth
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Ce (b) (6) [redacted]

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Fax: 202-208-1873

(b) (6) [redacted]

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Wed Mar 28 2018 05:03:05 GMT-0600 (MDT)
To:	"Spector, Rachel" <rachel.spector@sol.doi.gov>
CC:	"Rees, Gareth" <gareth_rees@ios.doi.gov>, "Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>, "Nigborowicz, Timothy" <timothy_nigborowicz@ios.doi.gov>
Subject:	Re: Tour of Dry Tortugas National Park

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On Tue, Mar 27, 2018 at 5:19 PM, Spector, Rachel <rachel.spector@sol.doi.gov> wrote:

> Hi Gareth:
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> Jennifer and I discussed the matter with (b) (5) [redacted]
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> Please let us know if you want to discuss it further. I've also cc'ed the Ethics Office in case they have any concerns.
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> Thanks,
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Tel: 202-208-6291

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Ce (b) (6) [redacted]

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CC:	"Connors, Margaret" <margaret.connors@sol.doi.gov>, "Spector, Rachel" <rachel.spector@sol.doi.gov>, Jennifer Heindl <jennifer.heindl@sol.doi.gov>, "Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>
Subject:	Re: Tour of Dry Tortugas National Park

Hi Gareth,

I left you a voicemail last night and sent you an email asking that we talk first thing this morning as there were additional considerations I wanted to discuss.

(b) (5) [redacted]

(b) (5)



Please let me know if you or David have questions or would care to discuss.

Thanks very much,
Ed

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"Nigborowicz, Timothy" <timothy_nigborowicz@ios.doi.gov>

From:	"Nigborowicz, Timothy" <timothy_nigborowicz@ios.doi.gov>
Sent:	Wed Mar 28 2018 08:57:44 GMT-0600 (MDT)
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Subject:	Re: Tour of Dry Tortugas National Park

That is correct. The Secretary reimbursed NPS for both Mrs. Zinke's travel and her aunt's travel on the NPS boat during his visits to the Channel Islands. As far as I know, NPS did not use a larger boat than the one they normally use for regular operations. However, there were changes made to the regular schedule and the regular pick-up/drop-off location.

On Wed, Mar 28, 2018 at 7:03 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

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> Gareth
>
> ---------- Forwarded message ----------
> From: **Rees, Gareth** <gareth_rees@ios.doi.gov>
> Date: Mon, Mar 26, 2018 at 1:25 PM
> Subject: Tour of Dry Tortugas National Park
> To: Jennifer Heindl <jennifer.heindl@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
>
> Good Afternoon,
>
> Deputy secretary Bernhardt is currently on personal leave in the Florida Keys. He will be conducting a few official meetings with NPS employees whilst he is there. On Thursday March 29th, he will head to Dry Tortugas National Park where NPS has offered to give him a tour of the park where they will be discussing the maintenance backlog and the impact of the hurricane season. A breakdown of the tour is listed below. Please note that Mr. Bernhardt be covering the cost of himself and children for transportation, meals and any equipment that may need to be rented. He asked that I run this through SOL/Ethics to make sure there are no problems. If you need any further information, please let me know. Thanks
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> Thursday March 29
> 0715-0800 Arrive at Key West Ferry Terminal, Check-In, Boarding 0730
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> 0800-1030 Commercial ferry *Yankee Freedom III* from Key West to Park, breakfast provided
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> 1030-1100 Greetings with Glenn Simpson, Park Manager (cell) 305-282-9231, at Main Dock, take lunches to go from ferry
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> 1730 End of day's activities
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Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cel (b) (6)

--

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Fax: 202-208-1873

Cell (b) (6)

David Bernhardt (b) (6) @ios.doi.gov>

From:	David Bernhardt (b) (6) t@ios.doi.gov>
Sent:	Wed Mar 28 2018 09:02:37 GMT-0600 (MDT)
To:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
CC:	edward.mcdonnell@sol.doi.gov
Subject:	Re: Tour of Dry Tortugas National Park

Gareth and Ed: Thanks for the email. I have talked to ED I was concerned when I saw the small boat on the itinerary yesterday, which is why I requested the ethics review.

In order to avoid any question of misuse of position I have already paid $600 for my family to take advantage of the commercial tour that is available.

It is my understanding that my family and I can take advantage of that commercial tour package

AND my family can take advantage of anything else the NPS offers to the general public.

The point is that we can not have them do anything that the public is unable to do.

Ed please correct me if that understanding is wrong.

In addition, I can break away from my family to review the facilities in need of repair, NPS equipment etc. while I'm there as part of my official duties.

However, my family is not to participate in those work related activities.

Sent from my iPhone

On Mar 28, 2018, at 10:22 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

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> Gareth
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> From: **McDonnell, Edward** <edward.mcdonnell@sol.doi.gov>
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> Subject: Re: Tour of Dry Tortugas National Park
> To: "Rees, Gareth" <gareth_rees@ios.doi.gov>
> Cc: "Connors, Margaret" <margaret.connors@sol.doi.gov>, "Spector, Rachel" <rachel.spector@sol.doi.gov>, Jennifer Heindl <jennifer.heindl@sol.doi.gov>, "Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>
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> Hi Gareth,
>
> I left you a voicemail last night and sent you an email asking that we talk first thing this morning as there were additional considerations I wanted to discuss.

(b) (5)



(b) (5)



(b) (5)



Please let me know if you or David have questions or would care to discuss.

Thanks very much,
Ed

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Ed McDonnell

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U.S. Department of the Interior

Departmental Ethics Office

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Wed Mar 28 2018 09:04:12 GMT-0600 (MDT)
To:	"Nigborowicz, Timothy" <timothy_nigborowicz@ios.doi.gov>
CC:	"Spector, Rachel" <rachel.spector@sol.doi.gov>, "Rees, Gareth" <gareth_rees@ios.doi.gov>, "Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>
Subject:	Re: Tour of Dry Tortugas National Park

Thanks, Tim!

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On Wed, Mar 28, 2018 at 10:57 AM, Nigborowicz, Timothy <timothy_nigborowicz@ios.doi.gov> wrote:

> That is correct. The Secretary reimbursed NPS for both Mrs. Zinke's travel and her aunt's travel on the NPS boat during his visits to the Channel Islands. As far as I know, NPS did not use a larger boat than the one they normally use for regular operations. However, there were changes made to the regular schedule and the regular pick-up/drop-off location.
>
> On Wed, Mar 28, 2018 at 7:03 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:
>
> > Hi Rachel,
> >
> > I believe that, when the Secretary, his wife, and his wife's aunt traveled to the Channel Islands in an NPS boat (b) (5) [redacted] not aware of the NPS having to use a bigger boat to

carry them. I'm cc'ing Tim Nigborowicz as he may have more accurate information as to what happened and why.

Thanks,
Ed

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On Tue, Mar 27, 2018 at 5:19 PM, Spector, Rachel <rachel.spector@sol.doi.gov> wrote:

> Hi Gareth:
>
> Jennifer and I discussed the matter with Da (b) (5) [redacted]

(b) (5) [redacted]

Please let us know if you want to discuss it further. I've also cc'ed the Ethics Office in case they have any concerns.

Thanks,

Rachel

Rachel Spector
Division of General Law
Office of the Solicitor
U.S. Department of the Interior
(202) 208-6029

On Tue, Mar 27, 2018 at 10:15 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> Hi Rachel
>
> Could you have a quick look at the email below and let me know if there are any issues? Happy to discuss.
>
> Thanks
>
> Gareth
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> Date: Mon, Mar 26, 2018 at 1:25 PM
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> To: Jennifer Heindl <jennifer.heindl@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent: Wed Mar 28 2018 09:13:25 GMT-0600 (MDT)

To:	David Bernhardt (b) (6) t@ios.doi.gov>
CC:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
Subject:	Re: Tour of Dry Tortugas National Park

Thanks very much, David.

Yes, you are correct. I just want to add, though I believe you already aware of this, that family members should not receive any special treatment from NPS personnel while participating in NPS activities that the public may otherwise participate in.

Also, just for the record, I understand that neither you nor your family members will be taking the small boat over to Loggerhead Key for any activities, is that correct?

Thanks,
Ed

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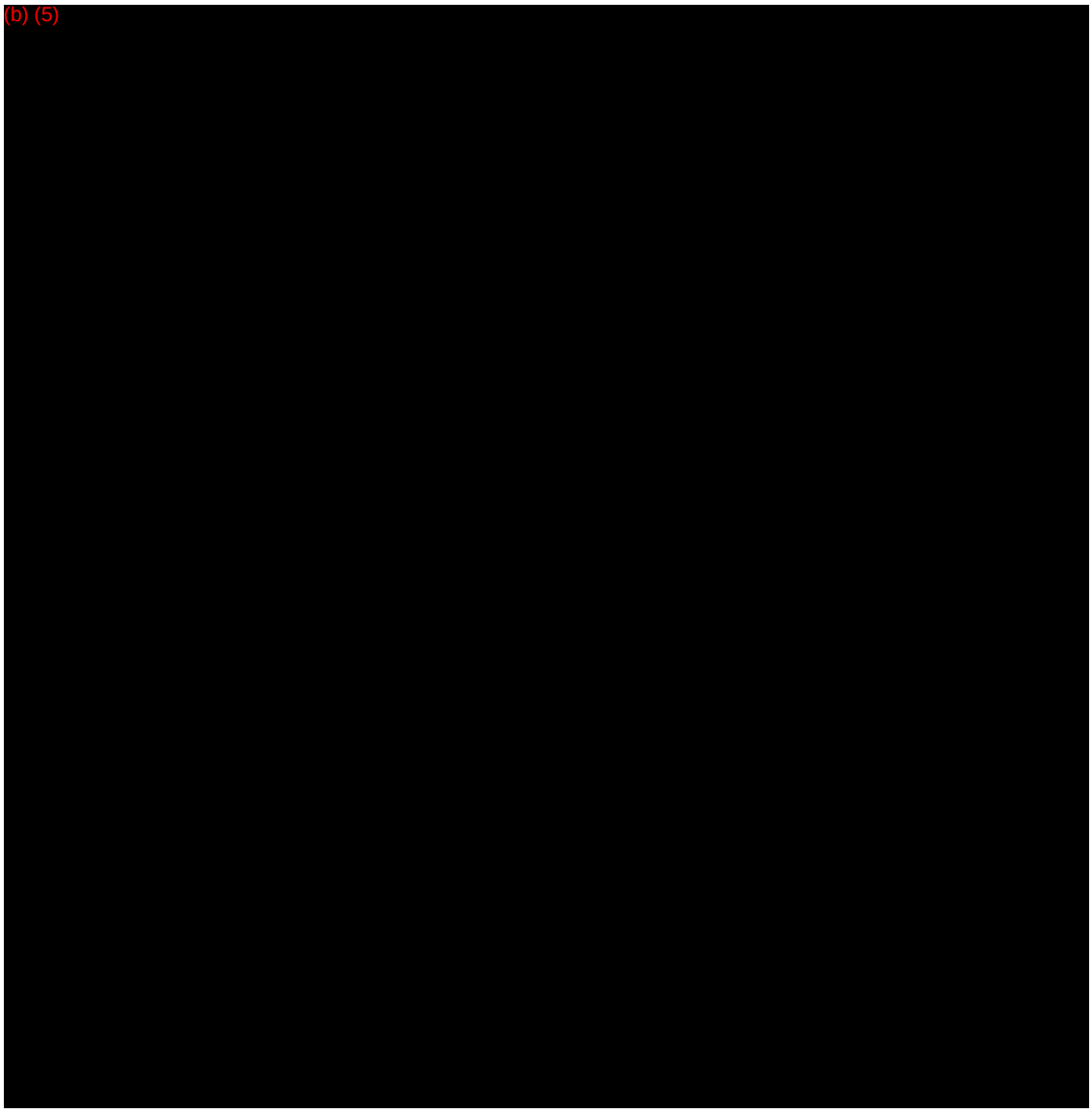
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Please let me know if you or David have questions or would care to discuss.

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We will not be taking a NPS vessel anywhere, and will avoid any “special treatment.”

Sent from my iPhone

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

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Room 5313

Office: (202) 208-5916
Cell: (b) (6)

Mailing Address:
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Office of the Solicitor
Department of the Interior
Mail Stop 5311
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> Good Afternoon,
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> Thursday March 29
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> 0800-1030 Commercial ferry *Yankee Freedom III* from Key West to Park, breakfast provided
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Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cel (b) (6) [redacted]

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Wed Mar 28 2018 09:39:14 GMT-0600 (MDT)
To:	David Bernhardt <dwbernhardt@ios.doi.gov>
CC:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
Subject:	Re: Tour of Dry Tortugas National Park

Thanks very much, David.

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On Wed, Mar 28, 2018 at 11:21 AM, David Bernhard (b) (6) [redacted]@ios.doi.gov> wrote:

> We will not be taking a NPS vessel anywhere, and will avoid any “special treatment.”
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> Sent from my iPhone
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> > Yes, you are correct. I just want to add, though I believe you already aware of this, that family members should not receive any special treatment from NPS personnel while participating in NPS activities that the public may otherwise participate in.
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> > Also, just for the record, I understand that neither you nor your family members will be taking the small boat over to Loggerhead Key for any activities, is that

correct?

Thanks,
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On Wed, Mar 28, 2018 at 11:02 AM, David Bernhard (b) (6) [redacted]@ios.doi.gov> wrote:

> Gareth and Ed: Thanks for the email. I have talked to ED I was concerned when I saw the small boat on the itinerary yesterday, which is why I requested the ethics review.

In order to avoid any question of misuse of position I have already paid $600 for my family to take advantage of the commercial tour that is available.

It is my understanding that my family and I can take advantage of that commercial tour package AND my family can take advantage of anything else the NPS offers to the general public.

The point is that we can not have them do anything that the public is unable to do.

Ed please correct me if that understanding is wrong.

In addition, I can break away from my family to review the facilities in need of repair, NPS equipment etc. while I'm there as part of my official duties.

However, my family is not to participate in those work related activities.

Sent from my iPhone

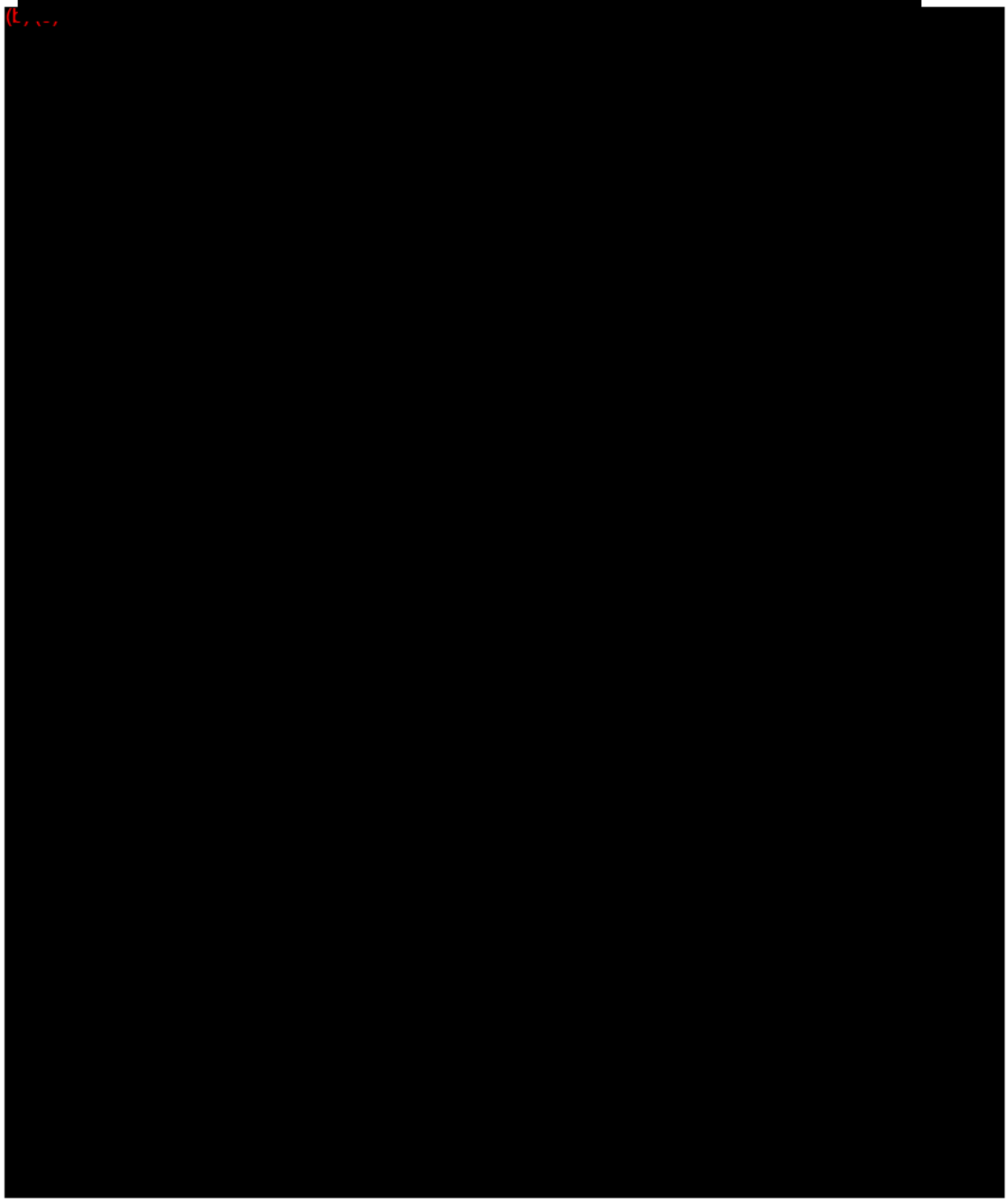
On Mar 28, 2018, at 10:22 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> David,
>
> Below is the response from Ethics
>
> Gareth
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> ---------- Forwarded message ----------
> From: **McDonnell, Edward** <edward.mcdonnell@sol.doi.gov>
> Date: Wed, Mar 28, 2018 at 10:03 AM
> Subject: Re: Tour of Dry Tortugas National Park
> To: "Rees, Gareth" <gareth_rees@ios.doi.gov>
> Cc: "Connors, Margaret" <margaret.connors@sol.doi.gov>, "Spector, Rachel" <rachel.spector@sol.doi.gov>, Jennifer Heindl <jennifer.heindl@sol.doi.gov>, "Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>
>
> Hi Gareth,
>
> I left you a voicemail last night and sent you an email asking that we talk first thing this morning as there were additional considerations I wanted to discuss.

(b) (5)



(b) (5)



Please let me know if you or David have questions or would care to discuss.

Thanks very much,
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Sent:	Wed Mar 28 2018 09:40:57 GMT-0600 (MDT)
To:	"Spector, Rachel" <rachel.spector@sol.doi.gov>, "Connors, Margaret" <margaret.connors@sol.doi.gov>, "Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>, Jennifer Heindl <jennifer.heindl@sol.doi.gov>
Subject:	Fwd: Tour of Dry Tortugas National Park

All,

FYI.

Thanks,
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(b) (5)



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U.S. Department of the Interior – Office of the Deputy Secretary

Meeting Proposal Information Form

***Please complete this form and send to gareth_rees@ios.doi.gov**

To ensure that the appropriate individual within the Department of the Interior is meeting with you on a given matter and because the Office of the Deputy Secretary is committed to maintaining the highest ethical standards, we request that you answer the following questions before we will agree to schedule a meeting.[1] Therefore, please provide your request in writing and answer the following questions either on this sheet or a separate one.

Describe the action you are seeking by the Office of the Deputy Secretary:

General meeting to discuss the Fish and Wildlife Service/National Marine Fisheries Services' California Bay-Delta Biological Opinion Reconsultation Process.

Meeting date: July 10 or 11.

Meeting location:

The Deputy Secretary's office

Contact information (Name, Email, and Phone):

Tina Dykstra

202-261-6013

tdykstra@tfgnet.com

With which Bureau or Agency does your agenda most align? (Please list all, if more than one.)

See above

Please indicate whether the matter related to the request involves:

- ☐ **a) Specific parties, such as a particular litigation matter, a specific permit decision, or a contract;**
- ☐ **b) A discrete and identifiable class of persons, such as a regulation or legislation that applies to a specific industry; or**
- ☐ **c) A broad and diverse range of persons, such as a resource management plan or broad legislation?**

If you answered "a)" above:

- **Please identify the specific parties if possible:**

[1] In order to avoid even the potential appearance of a lack of impartiality, the Deputy Secretary agreed that, for one year after his withdrawal from his former firm, he would not participate personally and substantially in any particular matter involving specific parties in which he knows his former firm is or represents a party, unless authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). He also agreed not to participate personally and substantially in any particular matter involving specific parties in which he knows a former client of his is or represents a party for a period of one year after he last provided service to that client, unless he is first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, per the Administration Ethics Pledge, the Deputy Secretary agreed that he will not for a period of two years from the date of his appointment participate in any particular matter involving specific parties in which a former employer or client of his is or represents a party, if he served that former employer or client during the two years prior to his appointment, absent a waiver under Section 3 of Executive Order No. 13770. This includes recusal from any meeting or other communication with such a former employer or client unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

- **If the specific parties are identified, are you aware that any party is represented by Brownstein Hyatt Farber Schreck, LLP in this particular matter?**

  ☐ **Yes** ☐ **No**

- **If yes, please identify any such specific party:**

Please explain the time sensitivity of the request, if any, including what is driving the timing of the request, such as court-ordered or statutory deadline:

Representatives of water districts affected by the BiOps, will be in town on those days.

If the requested action involves the interpretation or application of a particular policy, regulation, or statute, please provide the underlying text along with any briefing material sufficiently in advance of any meeting so that it can be reviewed before the meeting.

N/A

Expected meeting participants (name, title, and organization):

Jason Phillips, CEO of Friant Water Authority (FWA)
Thad Bettner, General Manager, Glenn Colusa Irrigation District (GCID)
David Guy, President, Northern California Water Association (NCWA)
Steve Chedester, Executive Director, San Joaquin River Exchange Contractors Water Authority
Lewis Bair, General Manager, Reclamation District 108
Chris Kearney. Principle, the Ferguson Group

If the Deputy Secretary is unable to meet, is a surrogate desired? If yes, who specifically?

Todd Willens

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of August 22, 2017

Title 40: Protection of Environment
PART 1505—NEPA AND AGENCY DECISIONMAKING

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§1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Need assistance?



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Title 3 is current through July 7, 2017.

TITLE 43 -- PUBLIC LANDS: INTERIOR
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC LANDS
CHAPTER II -- BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR
SUBCHAPTER C -- MINERALS MANAGEMENT (3000)
PART 3100 -- OIL AND GAS LEASING

Go to the CFR Archive Directory

43 CFR 3100

Part 3100 Note

LexisNexis (R) Notes:

CASE NOTES

Hughes v. Mwca, Inc., 2001 U.S. App. LEXIS 13298 (10th Cir June 14, 2001).

Overview: *Surface estate owners had no rights in deposit of scoria on property, where scoria was a mineral reserved to the United States under the Stock Raising Homestead Act of 1916.*

. Under the General Mining Law of 1872, depending on the type of mineral involved, private parties may acquire mineral deposits in one of three ways: by location of a mining claim, by lease, or by purchase. 43 C.F.R. § 3812.1. Typically, hardrock minerals, such as gold, silver, copper, and lead, are acquired by locating a mining claim. Regulations relating to locatable minerals are set out in 43 C.F.R. pt. 3800. Other federally owned minerals can be acquired only by leasing under the Mineral Leasing Act of 1920, *30 U.S.C.S. § 181,* and the regulations in 43 C.F.R. pt. 3100. These leasable minerals include oil and gas. The third category of minerals is acquired by purchase from the United States (through the Bureau of Land Management or the Forest Service) under the Materials Act of 1947, *30 U.S.C.S. § 601*. Go To Headnote

Ftc v. U.S. Oil & Gas Corp., 1987 U.S. Dist. LEXIS 16137 (SD Fla July 10, 1987).

Overview: *Corporations were liable under the Federal Trade Commission Act for misrepresenting the frequency that gas and oil leases were acquired and the profit potential from their advice and failing to disclose their true success rate in acquiring leases.*

. The bimonthly lottery system, the "SIMOL system," is operated under the authority of the Mineral Leasing Act of 1920, as amended, *30 U.S.C.S. § 181* et seq., and *43 C.F.R. § 3100* et seq. (1982). Oil and gas lease rights obtained through the lottery may be assigned by the winning applicant, 43 C.F.R. § 3106 (1982), which may result in a substantial financial reward to the winning applicant if one of the few valuable parcels is obtained and the rights are later sold. The lease winner may also retain a royalty interest in any subsequent production on the leased property. 43 C.F.R. § 3106.4 (1982). Go To Headnote

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W. Org. of Res. Councils v. Blm, 591 F. Supp. 2d 1206, 2008 U.S. Dist. LEXIS 106488 (D Wyo Nov. 26, 2008), affirmed by *608 F.3d 709, 2010 U.S. App. LEXIS 12588, 40 Envtl. L. Rep. 20168 (10th Cir. Wyo. 2010).*

Overview: *BLM decision to allow development of coalbed methane wells was upheld under NEPA and the APA because, inter alia, the BLM did take a hard look at the potential environmental consequences of the proposed project, the record of decision provided a framework for continuous BLM oversight, and the result was not predetermined by any method of analysis.*

. The Mineral Leasing Act and *43 C.F.R. § 3100* require maximum ultimate economic recovery of oil and gas from leased lands. Go To Headnote

Ftc v. U.S. Oil & Gas Corp., 1987 U.S. Dist. LEXIS 16137 (SD Fla July 10, 1987).

Overview: *Corporations were liable under the Federal Trade Commission Act for misrepresenting the frequency that gas and oil leases were acquired and the profit potential from their advice and failing to disclose their true success rate in acquiring leases.*

- The bimonthly lottery system, the "SIMOL system," is operated under the authority of the Mineral Leasing Act of 1920, as amended, *30 U.S.C.S. § 181* et seq., and *43 C.F.R. § 3100* et seq. (1982). Oil and gas lease rights obtained through the lottery may be assigned by the winning applicant, 43 C.F.R. § 3106 (1982), which may result in a substantial financial reward to the winning applicant if one of the few valuable parcels is obtained and the rights are later sold. The lease winner may also retain a royalty interest in any subsequent production on the leased property. 43 C.F.R. § 3106.4 (1982). Go To Headnote

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S. Utah Wilderness Alliance v. Palma, 707 F.3d 1143, 2013 U.S. App. LEXIS 464 (10th Cir Jan. 8, 2013).

Overview: *Suit challenging BLM decisions was premature because, pursuant to 5 U.S.C.S. § 704, there had not been a consummation of BLM's decisionmaking process sufficient to support litigation of the issue. What was characterized as the "reissuance" of leases, when BLM deemed them to be in suspension rather than terminated, were instead interim decisions.*

- The oil and gas leasing regulations found in 43 C.F.R. part 3100 are applicable, as appropriate, to combined hydrocarbon leases as well. *43 C.F.R. § 3140.1-4(e).* Go To Headnote



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Title 3 is current through July 7, 2017.

TITLE 43 -- PUBLIC LANDS: INTERIOR
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC LANDS
CHAPTER II -- BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR
SUBCHAPTER C -- MINERALS MANAGEMENT (3000)
PART 3100 -- OIL AND GAS LEASING
SUBPART 3100 -- ONSHORE OIL AND GAS LEASING: GENERAL

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43 CFR 3100.0-3

§ 3100.0-3 Authority.

(a) Public domain. (1) Oil and gas in public domain lands and lands returned to the public domain under section 2370 of this title are subject to lease under the Mineral Leasing Act of 1920, as amended and supplemented *(30 U.S.C. 181* et seq.), by acts, including, but not limited to, section 1009 of the Alaska National Interest Lands Conservation Act *(16 U.S.C. 3148).*

(2) Exceptions. (i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as provided in paragraph (g)(4) of this section;

(ii) Indian reservations;

(iii) Incorporated cities, towns and villages;

(iv) Naval petroleum and oil shale reserves and the National Petroleum Reserve--Alaska.

(v) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve--Alaska;

(vi) Arctic National Wildlife Refuge in Alaska.

(vii) Lands recommended for wilderness allocation by the surface managing agency:

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness

by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) Acquired lands. (1) Oil and gas in acquired lands are subject to lease under the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended *(30 U.S.C. 351*-359).

(2) Exceptions. (i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;

(ii) Incorporated cities, towns and villages;

(iii) Naval petroleum and oil shale reserves and the National Petroleum Reserve--Alaska;

(iv) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States;

(v) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas and other minerals subject to leasing under the Act;

(vi) Lands reported as excess under the Federal Property and Administrative Services Act of 1949;

(vii) Lands acquired by the United States by foreclosure or otherwise for resale.

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(c) National Petroleum Reserve--Alaska is subject to lease under the Department of the Interior Appropriations Act, Fiscal Year 1981 *(42 U.S.C. 6508).*

(d) Where oil or gas is being drained from lands otherwise unavailable for leasing, there is implied authority in the agency having jurisdiction of those lands to grant authority to the Bureau of Land Management to lease such lands (see *43 U.S.C. 1457;* also Attorney General's Opinion of April 2, 1941 (Vol. *40 Op. Atty. Gen. 41)).*

(e) Where lands previously withdrawn or reserved from the public domain are no longer needed by the agency for which the lands were withdrawn or reserved and such lands are retained by the General Services Administration, or where acquired lands are declared as excess to or surplus by the General Services Administration, authority to lease such lands may be transferred to the Department in accordance with the Federal Property and Administrative Services Act of 1949 and the Mineral Leasing Act for Acquired Lands, as amended.

(f) The Act of May 21, 1930 *(30 U.S.C. 301*-306), authorizes the leasing of oil and gas deposits under certain rights-of-way to the owner of the right-of-way or any assignee.

(g) (1) The Act of May 9, 1942 *(56 Stat. 273),* as amended by the Act of October 25, 1949 *(63 Stat. 886),* authorizes leasing on certain lands in Nevada.

(2) The Act of March 3, 1933 *(47 Stat. 1487),* as amended by the Act of June 5, 1936 *(49 Stat. 1482)* and the Act of June 29, 1936 *(49 Stat. 2026),* authorizes leasing on certain lands patented to the State of California.

(3) The Act of June 30, 1950 *(16 U.S.C. 508*(b)) authorizes leasing on certain National Forest Service Lands in Minnesota.

(4) Units of the National Park System. The Secretary is authorized to permit mineral leasing in the following units of the National Park System if he/she finds that such disposition would not have significant adverse effects on the administration of the area and if lease operations can be conducted in a manner that will preserve the scenic, scientific and historic features contributing to public enjoyment of the area, pursuant to the following authorities:

(i) Lake Mead National Recreation Area--The Act of October 8, 1964 *(16 U.S.C. 460n* et seq.).

(ii) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area--The Act of November 8, 1965 *(79 Stat. 1295; 16 U.S.C. 460q* et seq.).

(iii) Ross Lake and Lake Chelan National Recreation Areas--The Act of October 2, 1968 *(82 Stat. 926; 16 U.S.C. 90* et seq.).

(iv) Glen Canyon National Recreation Area--The Act of October 27, 1972 *(86 Stat. 1311; 16 U.S.C. 460dd* et seq.).

(5) Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area. Section 6 of the Act of November 8, 1965 (Pub. L. 89-336; *79 Stat. 1295),* authorizes the Secretary of the Interior to permit the removal of leasable minerals from lands (or interest in lands) within the recreation area under the jurisdiction of the Secretary of Agriculture in accordance with the Mineral Leasing Act of February 25, 1920, as amended *(30 U.S.C. 181* et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 *(30 U.S.C. 351*-359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 2113,* Jan. 18, 1984; *53 FR 17351, 17352,* May 16, 1988; *53 FR 22835,* June 17, 1988; *53 FR 31958,* Aug. 22, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

CASE NOTES Applicable to entire Part:Part Note



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43 CFR 3100.0-5

§ 3100.0-5 Definitions.

As used in this part, the term:

(a) Operator means any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(b) Unit operator means the person authorized under the agreement approved by the Department of the Interior to conduct operations within the unit.

(c) Record title means a lessee's interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease. Overriding royalty and operating rights are severable from record title interests.

(d) Operating right (working interest) means the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease.

(e) Transfer means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: Assignment which means a transfer of all or a portion of the lessee's record title interest in a lease; and sublease which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(f) National Wildlife Refuge System Lands means lands and water, or interests therein, administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife management areas or waterfowl production areas.

(g) Actual drilling operations includes not only the physical drilling of a well, but the testing, completing or equipping of such well for production.

(h)(1) Primary term of lease subject to section 4(d) of the Act prior to the revision of 1960 *(30 U.S.C. 226-1*(d)) means all periods of the life of the lease prior to its extension by reason of production of oil and gas in paying quantities; and

(2) Primary term of all other leases means the initial term of the lease. For competitive leases, except those within the National Petroleum Reserve--Alaska, this means 5 years and for noncompetitive leases this means 10 years.

(i) Lessee means a person or entity holding record title in a lease issued by the United States.

(j) Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

(k) Bid means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17352,* May 16, 1988; *53 FR 22836,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

LexisNexis (R) Notes:

CASE NOTES

Ftc v. U.S. Oil & Gas Corp., 1987 U.S. Dist. LEXIS 16137 (SD Fla July 10, 1987).

Overview: *Corporations were liable under the Federal Trade Commission Act for misrepresenting the frequency that gas and oil leases were acquired and the profit potential from their advice and failing to disclose their true success rate in acquiring leases.*

. Federal regulations prohibit leasing parcels known to contain oil or gas under the SIMOL lottery system; parcels which are known to have oil, parcels in a known geological structure or a "KGS," must be leased through a competitive bidding system. *43 C.F.R. §§3100.0-5(a), 3101.2-1(a).* The noncompeti-

tive SIMOL lottery is reserved for public lands not within a KGS. *43 C.F.R. §§ 3101.1-1*, 3112.1-1. Go To Headnote

In re Platinum Oil Props., Llc, 2013 Bankr. LEXIS 5024 (Bankr D NM Nov. 26, 2013).

Overview: *Because the debtor had not obtained the United States Secretary of the Interior's approval of a transfer to the debtor of operating rights under the oil and gas leases at issue, as required by 25 C.F.R. § 211.53, the purported transfer to the debtor was ineffective, and as a result, the debtor held no interest in the leases.*

- Under federal oil and gas leases, the lessee under an oil and gas lease holds record title to the lease. *43 C.F.R. § 3100.0-5(c)* and (i). Under the Mineral Leasing Act of 1920, an assignee of record title has a direct contractual relationship with the lessor, and is substituted for the lessor as to the interest that is assigned. A lessee typically has several obligations to the lessor, including the obligation to pay royalties and rental, reclamation, and whatever other obligations are set forth in the lease. Go To Headnote
- An operator is a person, natural or artificial (e.g. corporate), engaged in the business of drilling wells for oil and gas. The precise meaning of the term operator may differ depending on the context in which it is used. Generally an operator is the person who is responsible for the operations conducted on the leased lands or a portion thereof. *30 C.F.R. § 250.105*; *43 C.F.R. § 3100.0-5*. A lessee or operating rights owner may also serve as the operator on the ground, but under the Mineral Leasing Act of 1920 the party who conducts the actual operations may not be the lessee or operating rights owner. On the other hand, in some contexts the term operator is used to refer to one who holds operating rights. Go To Headnote
- The regulations under the Mineral Leasing Act of 1920 in effect from 1983 to 1987 defined designated operator as the party designated by the lessee or holder of operating rights to conduct operations on the lease or a portion thereof. Former *43 C.F.R. 3100.0-5 (1983)*. This definition suggests that a designation of operator does not confer operating rights. The current form of the regulation does not define designated operator, but defines operating right as the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including the production of oil or gas from such lands in accordance with the terms of the lease. *43 C.F.R. § 3100.0-5(d)*. Go To Headnote
- Under the Mineral Leasing Act of 1920, operator is defined as any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof. *43 C.F.R. 3100.0-5(a)*. Go To Headnote

Bubala v. Lujan, 1992 U.S. App. LEXIS 11719 (DC Cir May 11, 1992).

Overview: *Where Interior Board of Land Appeals had upheld a decision by a state Bureau of Land Management, district court was limited to determining whether action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.*

- *43 C.F.R. § 3100.0-5(1987)* defines a KGS as technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive. Go To Headnote

In re Platinum Oil Props., Llc, 2013 Bankr. LEXIS 5024 (Bankr D NM Nov. 26, 2013).

Overview: *Because the debtor had not obtained the United States Secretary of the Interior's approval of a transfer to the debtor of operating rights under the oil and gas leases at issue, as required by 25 C.F.R. § 211.53, the purported transfer to the debtor was ineffective, and as a result, the debtor held no interest in the leases.*

- Transfer is defined in the Mineral Leasing Act of 1920 regulations as any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: Assignment which means a transfer of all or a portion of the lessee's record title interest in a lease; and sublease which means a transfer of a non-record title in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a

sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States. *43 C.F.R. § 3100.0-5(e)*. Go To Headnote

. The regulations adopted under the Mineral Leasing Act of 1920 (MLA) expressly recognize the distinction between a record title interest in a lease and a non-record title interest in a lease, and address the concept of a sublease. The MLA regulations further establish that operating rights and operator are distinct concepts. A transfer of operating rights is a transfer of a non-record title interest in a lease, while the transfer of a purely financial interest, such as an overriding royalty interest or payment out of production, does not transfer either a record title or non-record title interest in a lease. *43 C.F.R. § 3100.0-5(e). 25 C.F.R. § 211.53(d)* of the Indian Mineral Leasing Act of 1938, *25 U.S.C.S. §§ 396a*-396g, regulation similarly provides that overriding royalty interests and payments out of production are not interests in a lease. Go To Headnote

In re Platinum Oil Props., Llc, 2013 Bankr. LEXIS 5024 (Bankr D NM Nov. 26, 2013).

Overview: *Because the debtor had not obtained the United States Secretary of the Interior's approval of a transfer to the debtor of operating rights under the oil and gas leases at issue, as required by 25 C.F.R. § 211.53, the purported transfer to the debtor was ineffective, and as a result, the debtor held no interest in the leases.*

. The regulations adopted under the Mineral Leasing Act of 1920 (MLA) expressly recognize the distinction between a record title interest in a lease and a non-record title interest in a lease, and address the concept of a sublease. The MLA regulations further establish that operating rights and operator are distinct concepts. A transfer of operating rights is a transfer of a non-record title interest in a lease, while the transfer of a purely financial interest, such as an overriding royalty interest or payment out of production, does not transfer either a record title or non-record title interest in a lease. *43 C.F.R. § 3100.0-5(e). 25 C.F.R. § 211.53(d)* of the Indian Mineral Leasing Act of 1938, *25 U.S.C.S. §§ 396a*-396g, regulation similarly provides that overriding royalty interests and payments out of production are not interests in a lease. Go To Headnote

Lowey v. Watt, 684 F.2d 957, 1982 U.S. App. LEXIS 17749 (DC Cir July 2, 1982).

Overview: *Applications for federal oil and gas leases were not invalid due to provision in the contract between the applicants and their filing service which violated federal agency's regulations. The defect was cured by unilateral waiver filed by the service.*

. A "sole party in interest" regulation requires the person or persons submitting a federal lease application to identify on the face of the drawing entry card all parties having an "interest" in the application. 43 C.F.R. § 3102.7 (1981). An "interest" includes any claim to an advantage or benefit from a lease or any defined or undefined share in any increments, issues, or profits which may be derived from the lease based upon or pursuant to any agreement or understanding existing at the time when the application or offer is filed. § 3100.0-5. A "multiple filing" regulation prohibits any arrangement entered into prior to selection which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein. § 3112.6-1(c). Failure to comply with either regulation disqualifies an application. § 3112.6-1(b)-(c). Go To Headnote

In re Platinum Oil Props., Llc, 2013 Bankr. LEXIS 5024 (Bankr D NM Nov. 26, 2013).

Overview: *Because the debtor had not obtained the United States Secretary of the Interior's approval of a transfer to the debtor of operating rights under the oil and gas leases at issue, as required by 25 C.F.R. § 211.53, the purported transfer to the debtor was ineffective, and as a result, the debtor held no interest in the leases.*

. Operating interest is generally defined as an interest created by an oil and gas lease that is burdened with the cost of development and operation of the property. Similarly, a working interest is understood to mean the operating interest under an oil and gas lease. The owner of the working interest has the exclusive right to exploit the minerals on the land. These definitions are consistent with the definition of

operating right applicable to federal oil and gas leases on non-Indian lands. *43 C.F.R. § 3100.0-5(d)*. Go To Headnote

- An operator is a person, natural or artificial (e.g. corporate), engaged in the business of drilling wells for oil and gas. The precise meaning of the term operator may differ depending on the context in which it is used. Generally an operator is the person who is responsible for the operations conducted on the leased lands or a portion thereof. *30 C.F.R. § 250.105*; *43 C.F.R. § 3100.0-5*. A lessee or operating rights owner may also serve as the operator on the ground, but under the Mineral Leasing Act of 1920 the party who conducts the actual operations may not be the lessee or operating rights owner. On the other hand, in some contexts the term operator is used to refer to one who holds operating rights. Go To Headnote

Monahan v. United States Doi, 2007 U.S. App. LEXIS 24211 (10th Cir Oct. 15, 2007).

Overview: *43 C.F.R. § 3100.0-5 classified the title holder's transfer of operating rights as a sublease, not an assignment. A sublease did not affect the relationship imposed by a lease between the lessee and the United States. Thus, under 30 U.S.C.S. § 187a, the sublease did not release the title holder of his lease obligations vis-a-vis the government.*

- An "assignment" is defined as a transfer of all or a portion of the lessee's record title interest in a lease. *43 C.F.R. § 3100.0-5(e)*. A "sublease" is defined as a transfer of a non-record title interest in a lease, a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee. A sublease does not affect the relationship imposed by a lease between the lessees and the United States. Under *43 C.F.R. § 3106.7-2*, a lessee can transfer his lease, but has a continuing obligation to the lessor, the government, even upon approval of the transfer. Go To Headnote

Monahan v. United States Doi, 2007 U.S. App. LEXIS 24211 (10th Cir Oct. 15, 2007).

Overview: *43 C.F.R. § 3100.0-5 classified the title holder's transfer of operating rights as a sublease, not an assignment. A sublease did not affect the relationship imposed by a lease between the lessee and the United States. Thus, under 30 U.S.C.S. § 187a, the sublease did not release the title holder of his lease obligations vis-a-vis the government.*

- A "lessee" is defined as a person or entity holding record title in a lease issued by the United States. *43 C.F.R. § 3100.0-5(I)*. "Record title" is defined as a lessee's interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease. *43 C.F.R. § 3100.0-5(c)* Go To Headnote
- A "transfer" is defined as any conveyance of an interest in a lease by assignment, sublease or otherwise. *43 C.F.R. § 3100.0-5(e)*. Go To Headnote

Ftc v. U.S. Oil & Gas Corp., 1987 U.S. Dist. LEXIS 16137 (SD Fla July 10, 1987).

Overview: *Corporations were liable under the Federal Trade Commission Act for misrepresenting the frequency that gas and oil leases were acquired and the profit potential from their advice and failing to disclose their true success rate in acquiring leases.*

- Federal regulations prohibit leasing parcels known to contain oil or gas under the SIMOL lottery system; parcels which are known to have oil, parcels in a known geological structure or a "KGS," must be leased through a competitive bidding system. *43 C.F.R. §§3100.0-5(a)*, *3101.2-1(a)*. The noncompetitive SIMOL lottery is reserved for public lands not within a KGS. *43 C.F.R. §§ 3101.1-1*, 3112.1-1. Go To Headnote

In re Platinum Oil Props., Llc, 2013 Bankr. LEXIS 5024 (Bankr D NM Nov. 26, 2013).

Overview: *Because the debtor had not obtained the United States Secretary of the Interior's approval of a transfer to the debtor of operating rights under the oil and gas leases at issue, as required by 25 C.F.R. § 211.53, the purported transfer to the debtor was ineffective, and as a result, the debtor held no interest in the leases.*

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43 CFR 3100.0-9

§ 3100.0-9 Information collection.

(a)(1) The collections of information contained in § 3103.4-1(b) have been approved by the Office of Management and Budget under *44 U.S.C. 3501* et seq. and are among the collections assigned clearance number 1004-0145. The information will be used to determine whether an oil and gas operator or owner may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with *30 U.S.C. 181,* et seq., and *30 U.S.C. 351*-359.

(2) Public reporting burden for the information collections assigned clearance number 1004-0145 is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0145, Washington, DC 20503.

(b)(1) The collections of information contained in § 3103.4-1(c) and (d) have been approved by the Office of Management and Budget under *44 U.S.C. 3501* et seq. and assigned clearance number 1010-0090. The information will be used to determine whether an oil and gas lessee may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with *30 U.S.C. 181,* et seq., and *30 U.S.C. 351*-359.

(2) Public reporting burden for this information is estimated to average 1/2 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service (Mail Stop 2300), 381 Elden Street, Herndon, VA 22070-4817, and the Office of Management and Budget, Paperwork Reduction Project, 1010-0090, Washington, DC 20503.

HISTORY: *[57 FR 35973,* Aug. 11, 1992]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

CASE NOTES Applicable to entire Part:Part Note



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43 CFR 3100.1

§ 3100.1 Helium.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the Act have been reserved to the United States.

HISTORY: *[48 FR 33662,* July 22, 1983]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3100.2 DRAINAGE.

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43 CFR 3100.2-1

§ 3100.2-1 Compensation for drainage.

Upon a determination by the authorized officer that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer may execute agreements with the owners of adjacent lands whereby the United States and its lessees shall be compensated for such drainage. Such agreements shall be made with the consent of any lessee affected by an agreement. Such lands may also be offered for lease in accordance with part 3120 of this title.

HISTORY: *[48 FR 33662,* July 22, 1983]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3100.2 DRAINAGE.

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43 CFR 3100.2-2

§ 3100.2-2 Drilling and production or payment of compensatory royalty.

Where lands in any leases are being drained of their oil or gas content by wells either on a Federal lease issued at a lower rate of royalty or on non-Federal lands, the lessee shall both drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling necessary wells, the lessee may, with the consent of the authorized officer, pay compensatory royalty in the amount determined in accordance with § 3162.2(a) of this title.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17352,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3100.3 OPTIONS.

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43 CFR 3100.3-1

§ 3100.3-1 Enforceability.

(a) No option to acquire any interest in a lease shall be enforceable if entered into for a period of more than 3 years (including any renewal period that may be provided for in the option) without the approval of the Secretary.

(b) No option or renewal thereof shall be enforceable until a signed copy or notice of option has been filed in the proper BLM office. Each such signed copy or notice shall include:

(1) The names and addresses of the parties thereto;

(2) The serial number of the lease to which the option is applicable;

(3) A statement of the number of acres covered by the option and of the interests and obligations of the parties to the option, including the date and expiration date of the option; and

(4) The interest to be conveyed and retained in exercise of the option. Such notice shall be signed by all parties to the option or their duly authorized agents. The signed copy or notice of option required by this paragraph shall contain or be accompanied by a signed statement by the holder of the option that he/she is the sole party in interest in the option; if not, he/she shall set forth the names and provide a description of the interest therein of the other interested parties, and provide a description of the agreement between them, if oral, and a copy of such agreement, if written.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17352,* May 16, 1988. Redesignated at *53 FR 22836,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3100.3-2

§ 3100.3-2 Effect of option on acreage.

The acreage to which the option is applicable shall be charged both to the grantor of the option and the option holder. The acreage covered by an unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the proper BLM office.

HISTORY: *[48 FR 33662,* July 22, 1983. Redesignated at *53 FR 22836,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3100.3 OPTIONS.

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43 CFR 3100.3-3

§ 3100.3-3 Option statements.

Each option holder shall file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing as of the prior June 30 and December 31, respectively:

(a) Any changes to the statements submitted under § 3100.3-1(b) of this title, and

(b) The number of acres covered by each option and the total acreage of all options held in each State.

HISTORY: *[53 FR 17352,* May 16, 1988. Redesignated and amended at *53 FR 22836,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3100.3 OPTIONS.

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43 CFR 3100.4

§ 3100.4 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3100 and parts 3110 through 3190 of this chapter are subject to part 2 of this title, except as provided in paragraph (c) of this section. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA) *(5 U.S.C. 552)* request.

(b) When you submit data and information under this part 3100 and parts 3110 through 3190 of this chapter that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all such data and information confidential to the extent allowed by § 2.13(c) of this title.

(c) Under the Indian Mineral Development Act of 1982 (IMDA) *(25 U.S.C. 2101* et seq.), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe --

(1) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(2) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to --

(i) The terms, conditions, or financial return to the Indian parties;

(ii) The extent, nature, value, or disposition of the Indian mineral resources; or

(iii) The production, products, or proceeds thereof.

(d) For information concerning Indian minerals not covered by paragraph (c) of this section --

(1) BLM will withhold such records as may be withheld under an exemption to FOIA when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation;

(2) BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure, using the standards and procedures of § 2.15(d) of this title, before making a decision about the applicability of FOIA exemption 4 to:

(i) Information obtained from a person outside the United States Government; when

(ii) Following consultation with a submitter under § 2.15(d) of this title, BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(iii) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the Indian mineral owner(s), but is uncertain that such is the case.

HISTORY: *[63 FR 52946, 52952,* Oct. 1, 1998]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *63 FR 52946, 52952,* Oct. 1, 1998, added this section, effective Nov. 2, 1998.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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SUBTITLE B -- REGULATIONS RELATING TO PUBLIC LANDS
CHAPTER II -- BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR
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43 CFR 3101.1-1

§ 3101.1-1 Lease form.

A lease shall be issued only on the standard form approved by the Director.

HISTORY: *[53 FR 17352,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

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Ftc v. U.S. Oil & Gas Corp., 1987 U.S. Dist. LEXIS 16137 (SD Fla July 10, 1987).

Overview: *Corporations were liable under the Federal Trade Commission Act for misrepresenting the frequency that gas and oil leases were acquired and the profit potential from their advice and failing to disclose their true success rate in acquiring leases.*

- Federal regulations prohibit leasing parcels known to contain oil or gas under the SIMOL lottery system; parcels which are known to have oil, parcels in a known geological structure or a "KGS," must be leased through a competitive bidding system. *43 C.F.R. §§3100.0-5(a)*, *3101.2-1(a)*. The noncompetitive SIMOL lottery is reserved for public lands not within a KGS. *43 C.F.R. §§ 3101.1-1*, 3112.1-1. Go To Headnote

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43 CFR 3101.1-2

§ 3101.1-2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

HISTORY: *[53 FR 17352,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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Wyo. Outdoor Council v. Bosworth, 284 F. Supp. 2d 81, 2003 U.S. Dist. LEXIS 17101 (DDC Sept. 30, 2003).

Overview: *Coalition of environmental groups' claim was not ripe for argument because their claims rested upon contingent future events that may not have occurred as anticipated, or may not have occurred at all.*

- Bureau of Land Management regulations state that the lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold. *43 C.F.R. § 3101.1-2*. The regulations, however, go on to subject that right to three reservations: [1] stipulations attached to the lease; [2] restrictions deriving from specific, nondiscretionary statutes such as the Endangered Species Act; and [3] reasonable measures to minimize adverse impacts to other resource values not addressed in the stipulations. Go To Headnote

N. Plains Res. Council v. United States Blm, 298 F. Supp. 2d 1017, 2003 U.S. Dist. LEXIS 25347 (D Mont Sept. 4, 2003).

Overview: *Magistrate recommended entry of summary judgment for BLM; BLM was not required to perform new EIS before issuing oil and gas leases because lessees were limited to small scale exploration, which was permitted under existing resource management plan.*

- Under *43 C.F.R. § 3101.1-2*, the holder of a federal lease has the right to develop mineral interests. Go To Headnote
- The United States District Court for the District of Montana, Billings Division, agrees that *43 C.F.R. § 3101.1-2* grants leaseholders the right to develop mineral interests. Go To Headnote

Yates Petroleum Corp. v. Norton, 2002 U.S. Dist. LEXIS 27261 (D Wyo Mar. 7, 2002).

Overview: *Court agreed that an environmental suit was not ripe for review where no site-specific decision was made granting or denying a permit to drill existed with respect to the oil leases, direction drilling, or a use of centralized production facilities.*

- The Federal Land Policy and Management Act, *43 U.S.C.S. § 1301* et seq., grants the United States Bureau of Land Management (BLM) broad statutory authority to manage public lands and permits it specifically by regulation or otherwise, to take any action necessary to prevent unnecessary or undue degradation of the lands. *43 U.S.C.S. § 1732*(b). The BLM may impose post-lease mitigation measures so long as they are reasonable, *43 C.F.R. § 3101.1-2*, and may impose additional measures not ad-

dressed in the lease stipulations at the time operations are proposed, with the purpose of minimizing adverse impacts to other resource values, land uses or users. Go To Headnote

. Under applicable regulations, including *43 C.F.R. § 3101.1-2*, the United States Bureau of Land Management has the directive to impose reasonable measures to minimize impacts to other multiple uses and such measures can be added as stipulations after the issuance of the primary lease. The regulation also permits the adaptive environmental management planning process because the process is a natural extension of the list of non-exhaustive reasonable measures. Go To Headnote

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S. Utah Wilderness Alliance v. Norton, 457 F. Supp. 2d 1253, 2006 U.S. Dist. LEXIS 53621 (D Utah Aug. 1, 2006), appeal dismissed by *525 F.3d 966, 2008 U.S. App. LEXIS 10249 (10th Cir. Utah 2008).*

Overview: *Utah BLM's decision to sell 16 oil and gas leases in areas that the BLM acknowledged had wilderness character was reversed and remanded in light of the BLM's violations of NEPA for failure to prepare an adequate pre-leasing document prior to the sale and for failure to supplement existing NEPA analyses in light of new information.*

. A lease sale by the Bureau of Land Management (BLM) itself is a public auction with leases sold to the highest bidder. *43 C.F.R. § 3120.5-1*. If not acquired on the day of the sale, leases remain available for purchase at a reduced rate over the next two years. *43 C.F.R. § 3120.6*. Competitive and non-competitive leases have primary terms of 10 years and can be held indefinitely by production of hydrocarbons in paying quantities. 43 C.F.R. §§ 3110.3-1 and 3120.2. The BLM completes the leasing transaction by "issuing" the lease to the high bidder after the lease sale. *43 C.F.R. § 3120.5-3*. If a lease is protested by a member of the public, the lease is not issued until the protest is resolved. A lessee has certain, defined surface use rights: A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove, and dispose of all the leased resource in a leasehold. *43 C.F.R. § 3101.1-2*. In sum, in the fluid minerals program, the point of irretrievable and irreversible commitment occurs at the point of lease issuance. Go To Headnote

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. The Federal Land Policy and Management Act, *43 U.S.C.S. § 1301* et seq., grants the United States Bureau of Land Management (BLM) broad statutory authority to manage public lands and permits it specifically by regulation or otherwise, to take any action necessary to prevent unnecessary or undue degradation of the lands. *43 U.S.C.S. § 1732*(b). The BLM may impose post-lease mitigation measures so long as they are reasonable, *43 C.F.R. § 3101.1-2*, and may impose additional measures not addressed in the lease stipulations at the time operations are proposed, with the purpose of minimizing adverse impacts to other resource values, land uses or users. Go To Headnote

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43 CFR 3101.1-3

§ 3101.1-3 Stipulations and information notices.

The authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. Any party submitting a bid under subpart 3120 of this title, or an offer under § 3110.1(b) of this title during the period when use of the parcel number is required pursuant to § 3110.5-1 of this title, shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale available from the proper BLM office. A party filing a noncompetitive offer in accordance with § 3110.1(a) of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, unless the offer is withdrawn in accordance with § 3110.6 of this title. An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

HISTORY: *[53 FR 17352,* May 16, 1988, as amended at *53 FR 22836,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note

Western Energy Alliance v. Salazar, 709 F.3d 1040, 2013 U.S. App. LEXIS 4939 (10th Cir Mar. 12, 2013).

Overview: *Energy companies' appeal from a district court order remanding their claims for the Bureau of Land Management to make decisions regarding pending leases was dismissed because the order fell under the administrative-remand rule, and the order did not meet the urgency prong of the practical finality exception to the administrative-remand rule.*

- Prior to issuing a sale notice, parcels are reviewed by the Bureau of Land Management (BLM) field offices to determine conformance with the applicable Resource Management Plan (RMP). RMPs are area-wide land use plans that specify which areas will be considered for oil and gas development and what conditions will be placed on such development. If the lands are determined to be available for oil and gas development under the applicable RPM, the BLM field office conducts an interdisciplinary team review of the parcels, focusing on conflicts with wildlife, habitat, wilderness, land characteristics, planning and other resource values. The interdisciplinary team also evaluates whether new and significant information has emerged since the RMP was adopted that would require further analysis of the environmental impact of oil and gas development on the parcels under the National Environmental Policy Act (NEPA), *42 U.S.C.S. § 4321* et seq., or whether a determination of NEPA adequacy can be issued. If the NEPA analysis is determined to no longer be valid, the BLM field office will perform an environmental assessment before the lease sale. These pre-leasing review processes can result in parcel rejections, deferrals, and/or stipulations being placed on the leases. *43 C.F.R. § 3101.1-3*. Go To Headnote



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43 CFR 3101.1-4

§ 3101.1-4 Modification or waiver of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period.

HISTORY: *[53 FR 22836,* June 17, 1988; *53 FR 31958,* Aug. 22, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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CASE NOTES Applicable to entire Part:Part Note



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§ 3101.2 ACREAGE LIMITATIONS.

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43 CFR 3101.2-1

§ 3101.2-1 Public domain lands.

(a) No person or entity shall take, hold, own or control more than 246,080 acres of Federal oil and gas leases in any one State at any one time. No more than 200,000 acres of such acres may be held under option.

(b) In Alaska, the acreage that can be taken, held, owned or controlled is limited to 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the 2 leasing districts. The boundary between the 2 leasing districts in Alaska begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 *(16 U.S.C. 3101),* at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63[degrees]9'38" north latitude, 142[degrees]20'52" west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17352,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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Overview: *Corporations were liable under the Federal Trade Commission Act for misrepresenting the frequency that gas and oil leases were acquired and the profit potential from their advice and failing to disclose their true success rate in acquiring leases.*

. Federal regulations prohibit leasing parcels known to contain oil or gas under the SIMOL lottery system; parcels which are known to have oil, parcels in a known geological structure or a "KGS," must be leased through a competitive bidding system. *43 C.F.R. §§3100.0-5(a)*, *3101.2-1(a)*. The noncompetitive SIMOL lottery is reserved for public lands not within a KGS. *43 C.F.R. §§ 3101.1-1*, 3112.1-1. Go To Headnote

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43 CFR 3101.2-2

§ 3101.2-2 Acquired lands.

An acreage limitation separate from, but equal to the acreage limitation for public domain lands described in § 3101.2-1 of this title, applies to acquired lands. Where the United States owns only a fractional interest in the mineral resources of the lands involved in a lease, only that part owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be charged as acreage holdings until the lease for the future interest becomes effective.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

CASE NOTES Applicable to entire Part:Part Note



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43 CFR 3101.2-3

§ 3101.2-3 Excepted acreage.

(a) The following acreage shall not be included in computing accountable acreage:

(1) Acreage under any lease any portion of which is committed to any Federally approved unit or cooperative plan or communitization agreement;

(2) Acreage under any lease for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year; and

(3) Acreage under leases subject to an operating, drilling or development contract approved by the Secretary.

(b) Acreage subject to offers to lease, overriding royalties and payments out of production shall not be included in computing accountable acreage.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17352,* May 16, 1988; *71 FR 14821, 14823,* Mar. 24, 2006]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *71 FR 14821, 14823,* Mar. 24, 2006, amended this section, effective Mar. 24, 2006.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3101.2-4

§ 3101.2-4 Excess acreage.

(a) Where, as the result of the termination or contraction of a unit or cooperative plan, the elimination of a lease from an operating, drilling or development contract a party holds or controls excess accountable acreage, said party shall have 90 days from that date to reduce the holdings to the prescribed limitation and to file proof of the reduction in the proper BLM office. Where as a result of a merger or the purchase of the controlling interest in a corporation, acreage in excess of the amount permitted is acquired, the party holding the excess acreage shall have 180 days from the date of the merger or purchase to divest the excess acreage. If additional time is required to complete the divestiture of the excess acreage, a petition requesting additional time, along with a full justification for the additional time, may be filed with the authorized officer prior to the termination of the 180-day period provided herein.

(b) If any person or entity is found to hold accountable acreage in violation of the provisions of these regulations, lease(s) or interests therein shall be subject to cancellation or forfeiture in their entirety, until sufficient acreage has been eliminated to comply with the acreage limitation. Excess acreage or interest shall be cancelled in the inverse order of acquisition.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.2-5

§ 3101.2-5 Computation.

The accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party who is the beneficial owner of more than 10 percent of the stock of a corporation which holds Federal oil and gas leases shall be the party's proportionate part of the corporation's accountable acreage. Parties to a contract for development of leased lands and co-parties, except those operating, drilling or development contracts subject to § 3101.2-3 of this title, shall be charged with their proportionate interests in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the laws for any one party shall be permitted.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 2113,* Jan. 18, 1984; *53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.2-6

§ 3101.2-6 Showing required.

At any time the authorized officer may require any lessee or operator to file with the Bureau of Land Management a statement showing as of specified date the serial number and the date of each lease in which he/she has any interest, in the particular State, setting forth the acreage covered thereby.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.3-1

§ 3101.3-1 Joinder evidence required.

Before issuance of a lease for lands within an approved unit, the lease offeror shall file evidence with the proper BLM office of having joined in the unit agreement and unit operating agreement or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable to the authorized officer the operator shall be permitted to operate independently but shall be required to conform to the terms and provisions of the unit agreement with respect to such operations.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.3-2

§ 3101.3-2 Separate leases to issue.

A lease offer for lands partly within and partly outside the boundary of a unit shall result in separate leases, one for the lands within the unit, and one for the lands outside the unit.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.4

§ 3101.4 Lands covered by application to close lands to mineral leasing.

Offers filed on lands within a pending application to close lands to mineral leasing shall be suspended until the segregative effect of the application is final.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.5-1

§ 3101.5-1 Wildlife refuge lands.

(a) Wildlife refuge lands are those lands embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(b) No offers for oil and gas leases covering wildlife refuge lands shall be accepted and no leases covering such lands shall be issued except as provided in § 3100.2 of this title. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau on a form approved by the Director.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.5-2

§ 3101.5-2 Coordination lands.

(a) Coordination lands are those lands withdrawn or acquired by the United States and made available to the States by cooperative agreements entered into between the Fish and Wildlife Service and the game commissions of the various States, in accordance with the Act of March 10, 1934 *(48 Stat. 401),* as amended by the Act of August 14, 1946 *(60 Stat. 1080),* or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act *(50 Stat. 525),* as amended, where such lands were subsequently transferred to the Department of the Interior, with the Fish and Wildlife Service as the custodial agency of the United States.

(b) Representatives of the Bureau and the Fish and Wildlife Service shall, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those coordination lands which shall not be subject to oil and gas leasing. Coordination lands not closed to oil and gas leasing shall be subject to leasing on the imposition of such stipulations as are agreed upon by the State Game Commission, the Fish and Wildlife Service and the Bureau.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.5-3

§ 3101.5-3 Alaska wildlife areas.

No lands within a refuge in Alaska open to leasing shall be available until the Fish and Wildlife Service has first completed compatability determinations.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.5-4

§ 3101.5-4 Stipulations.

Leases shall be issued subject to stipulations prescribed by the Fish and Wildlife Service as to the time, place, nature and condition of such operations in order to minimize impacts to fish and wildlife populations and habitat and other refuge resources on the areas leased. The specific conduct of lease activities on any refuge lands shall be subject to site-specific stipulations prescribed by the Fish and Wildlife Service.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.6

§ 3101.6 Recreation and public purposes lands.

Under the Recreation and Public Purposes Act, as amended *(43 U.S.C. 869* et seq.), all lands within Recreation and Public Purposes leases and patents are subject to lease under the provisions of this part, subject to such conditions as the Secretary deems appropriate.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3101.7-1

§ 3101.7-1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

(c) National Forest System lands whether acquired or reserved from the public domain shall not be leased over the objection of the Forest Service. The provisions of paragraph (a) of this section shall apply to such National Forest System lands.

HISTORY: *[53 FR 22836,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of

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43 CFR 3101.7-2

§ 3101.7-2 Action by the Bureau of Land Management.

(a) Where the surface managing agency has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer shall incorporate the stipulations into any lease which it may issue. The authorized officer may add additional stipulations.

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

(c) The authorized officer shall review all recommendations and shall accept all reasonable recommendations of the surface managing agency.

HISTORY: *[48 FR 33662,* July 22, 1983. Redesignated and amended at *53 FR 22836,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3101.7-3

§ 3101.7-3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

HISTORY: *[53 FR 22837,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3101.8

§ 3101.8 State's or charitable organization's ownership of surface overlying Federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, with reservation of the oil and gas rights to the United States, such party shall be given an opportunity to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of a lease. Where a party controlling the surface opposes the issuance of a lease or wishes to place such restrictive stipulations upon the lease that it could not be operated upon or become part of a drilling unit and hence is without mineral value, the facts submitted in support of the opposition or request for restrictive stipulations shall be given consideration and each case decided on its merits. The opposition to lease or necessity for restrictive stipulations expressed by the party controlling the surface affords no legal basis or authority to refuse to issue the lease or to issue the lease with the requested restrictive stipulations for the reserved minerals in the lands; in such case, the final determination whether to issue and with what stipulations, or not to issue the lease depends upon whether or not the interests of the United States would best be served by the issuance of the lease.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 2113,* Jan. 18, 1984; *53 FR 22837,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3102.1

§ 3102.1 Who may hold leases.

Leases or interests therein may be acquired and held only by citizens of the United States; associations (including partnerships and trusts) of such citizens; corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3102.2

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.

HISTORY: *[53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3102.3

§ 3102.3 Minors.

Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf. Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of § 3102.1 of this title.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3102.4

§ 3102.4 Signature.

(a) The original of an offer or bid shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.

(b) Three copies of a transfer of record title or of operating rights (sublease), as required by section 30a of the act, shall be originally signed and dated by the transferor or anyone authorized to sign on behalf of the transferor. However, a transferee, or anyone authorized to sign on his or her behalf, shall be required to sign and date only 1 original request for approval of a transfer.

(c) Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

(d) Submission of a qualification number does not meet the requirements of paragraph (c) of this section.

HISTORY: *[53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3102.5-1

§ 3102.5-1 Compliance.

In order to actually or potentially own, hold, or control an interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term entity is defined at § 3400.0-5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the Act; and

(f) In compliance with section 17(g) of the Act, in which case the signature on an offer, lease, assignment, transfer, constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in § 3400.0-5(rr) of this title, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the Act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes, whichever comes first. A lease issued, or an assignment or transfer ap-

proved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance shall end upon a determination by the authorized officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

(g) In compliance with § 3106.1(b) of this title and section 30A of the Act. The authorized officer may accept the signature on a request for approval of an assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) as acceptable certification that the assignment would further the development of oil and gas, or the authorized officer may apply the provisions of § 3102.5-3 of this title.

HISTORY: *[53 FR 22837,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3102.5-2

§ 3102.5-2 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease shall certify it is in compliance with the act as set forth in § 3102.5-1 of this title. A party(s) that is a corporation or publicly traded association, including a publicly traded partnership, shall certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership of the corporation, association or partnership are in compliance with the act. Execution and submission of an offer, competitive bid form, or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

HISTORY: *[53 FR 17353,* May 16, 1988; *53 FR 22837,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3102.5-3

§ 3102.5-3 Evidence of compliance.

The authorized officer may request at any time further evidence of compliance and qualification from any party holding or seeking to hold an interest in a lease. Failure to comply with the request of the authorized officer shall result in adjudication of the action based on the incomplete submission.

HISTORY: *[53 FR 17353,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3103.1-1

§ 3103.1-1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified check, or money order, and shall be made payable to the Department of the Interior--Bureau of Land Management or the Department of the Interior--Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

HISTORY: *[53 FR 22837,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3103.1-2

§ 3103.1-2 Where submitted.

(a)(1) All fees for lease applications or offers or for requests for approval of a transfer and all first-year rentals and bonuses for leases issued under Group 3100 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, shall be paid to the Service at the following address: Minerals Management Service, Royalty Management Program/BRASS, Box 5640 T.A., Denver, CO 80217.

(b) All rentals and royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all payments under subsurface storage agreements and easements for directional drilling shall be paid to the Service.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 11637,* Mar. 27, 1984; *49 FR 39330,* Oct. 5, 1984; *53 FR 17353,* May 16, 1988; *72 FR 50882, 50887,* Sept. 5, 2007]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *72 FR 50882, 50887,* Sept. 5, 2007, revised paragraph (a)(1), effective Oct. 1, 2007.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3103.2-1

§ 3103.2-1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent or $ 200, whichever is less, shall be accepted by the authorized officer provided all other requirements are met. Rental submitted shall be determined based on the total amount remitted less all required fees. The additional rental shall be paid within 30 days from notice of the deficiency under penalty of cancellation of the lease.

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 15 calendar days of receipt of notice from the authorized officer of the error.

(c) Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable for the full acreage in such lands.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 26920,* June 29, 1984, *53 FR 22837,* June 17, 1988; *53 FR 31958,* Aug. 22, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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§ 3103.2-2 Annual rental payments.

Rentals shall be paid on or before the lease anniversary date. A full year's rental shall be submitted even when less than a full year remains in the lease term, except as provided in § 3103.4-4(d) of this title. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the designated Service office is not open on the anniversary date, payment received on the next day the designated Service office is open to the public shall be deemed to be timely made. Payments made to an improper BLM or Service office shall be returned and shall not be forwarded to the designated Service office. Rental shall be payable at the following rates:

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be $ 1.50 per acre or fraction thereof for the first 5 years of the lease term and $ 2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) The annual rental for all leases issued on or before December 22, 1987, or issued pursuant to an application or offer to lease filed prior to that date shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former subpart 3112 of this title on or after February 19, 1982, shall be subject after February 1, 1989, to annual rental in the sixth and subsequent lease years of $ 2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of $ 2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2-3 of this title, and on noncompetitive leases that were originally issued under § 3108.2-4 of this title, the annual rental shall be $ 5 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be $ 10 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease under § 3108.2-3 of this title; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2-3 of this title, the annual rental on that lease shall increase by an additional $ 5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional $ 10 per acre or fraction thereof for leases that were originally issued competitively.

HISTORY: *[53 FR 17353,* May 16, 1988 and *53 FR 22837,* June 17, 1988; *61 FR 4748, 4750,* Feb. 8, 1996]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *61 FR 4748, 4750,* Feb. 8, 1996, which substituted "§ 3103.4-4" for "§ 3103.4-2" in the introductory text, became effective March 11, 1996.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3103.3-1

§ 3103.3-1 Royalty on production.

(a) Royalty on production will be payable only on the mineral interest owned by the United States. Royalty must be paid in amount or value of the production removed or sold as follows:

(1) For leases issued on or before January 17, 2017, the rate prescribed in the lease or in applicable regulations at the time of lease issuance;

(2) For leases issued after January 17, 2017:

(i) 121/2 percent on all noncompetitive leases;

(ii) A rate of not less than 121/2 percent on all competitive leases, exchange and renewal leases, and leases issued in lieu of unpatented oil placer mining claims under § 3108.2-4 of this title;

(3) 162/3 percent on noncompetitive leases reinstated under § 3108.2-3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(4) The rate used for royalty determination that appears in a lease that is reinstated or that is in force for competitive leases at the time of issuance of the lease that is reinstated, plus 4 percentage points, plus an additional 2 percentage points for each succeeding reinstatement.

(b) Leases that qualify under specific provisions of the Act of August 8, 1946 *(30 U.S.C. 226c)* may apply for a limitation of a 121/2 percent royalty rate.

(c) The average production per well per day for oil and gas will be determined pursuant to *43 CFR 3162.7-4*.

(d) Payment of a royalty on the helium component of gas will not convey the right to extract the helium from the gas stream. Applications for the right to extract helium from the gas stream will be made under part 16 of this title.

HISTORY: *[53 FR 22838,* June 17, 1988; *81 FR 83008, 83077,* Nov. 18, 2016, as corrected at *81 FR 88634,* Dec. 8, 2016]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *81 FR 83008, 83077*, Nov. 18, 2016, revised this section, effective Jan. 17, 2017.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

CASE NOTES Applicable to entire Part:Part Note



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43 CFR 3103.3-2

§ 3103.3-2 Minimum royalties.

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $ 1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (a)(2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral or internet-based auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

(b) Minimum royalties shall not be prorated for any lands in which the United States owns a fractional interest but shall be payable on the full acreage of the lease.

(c) Minimum royalties and rentals on non-participating acreage shall be payable to the Service.

(d) The minimum royalty provisions of this section shall be applicable to leases reinstated under § 3108.2-3 of this title and leases issued under § 3108.2-4 of this title.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 11637,* Mar. 27, 1984; *49 FR 30448,* July 30, 1984; *53 FR 22838,* June 17, 1988; *81 FR 59902, 59905,* Aug. 31, 2016]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *81 FR 59902, 59905,* Aug. 31, 2016, revised paragraph (a)(2), effective Aug. 31, 2016.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3103.4-1

§ 3103.4-1 Royalty reductions.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development or that the leases cannot be successfully operated under the terms provided therein, may waive, suspend or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or any portion thereof.

(b)(1) An application for the benefits under paragraph (a) of this section must be filed by the operator/payor in the proper BLM office. The application must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

(2) Each application shall show the number, location and status of each well drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty, the number of wells counted as producing each month and the average production per well per day.

(3) Every application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any production and all facts tending to show whether the wells can be successfully operated upon the fixed royalty or rental. Where the application is for a reduction in royalty, full information shall be furnished as to whether overriding royalties, payments out of production, or similar interests are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant shall also file agreements of the holders to a reduction of all other royalties or similar payments from the leasehold to an aggregate not in excess of one-half the royalties due the United States.

(c) Petition may be made for reduction of royalty under § 3108.2-3(f) for leases reinstated under § 3108.2-3 of this title and under § 3108.2-4(i) for noncompetitive leases issued under § 3108.2-4 of this title. Petitions to waive,

suspend or reduce rental or minimum royalty for leases reinstated under § 3108.2-3 of this title or for leases issued under § 3108.2-4 of this title may be made under this section.

(d) [Redesignated as paragraph (b) of § 3103.4-2.]

(e) [Redesignated as paragraph (c).]

HISTORY: *[48 FR 33662,* July 22, 1983; *48 FR 39225,* Aug. 30, 1983, as amended at *49 FR 30448,* July 30, 1984; *53 FR 17354,* May 16, 1988; *57 FR 35973,* Aug. 11, 1992; *61 FR 4748, 4750,* Feb. 8, 1996; *75 FR 61624, 61626,* Oct. 6, 2010]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *75 FR 61624, 61626,* Oct. 6, 2010, amended paragraph (b)(1), effective Oct. 6, 2010.]

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43 CFR 3103.4-2

§ 3103.4-2 Stripper well royalty reductions.

(a) Certification. The applicable royalty rate shall be used by the operator/payor when submitting the required royalty reports/payments to ONRR. By submitting royalty reports/payments using the royalty rate reduction benefits of this program, the operator certifies that the production rate for the qualifying and subsequent 12-month period was not subject to manipulation for the purpose of obtaining the benefit of a royalty rate reduction, and the royalty rate was calculated in accordance with the instructions and procedures in these regulations.

(b) Record retention. For seven years after production on which the operator claims a royalty rate reduction for stripper well properties, the operator must retain and make available to BLM for inspection all documents on which the calculation of the applicable royalty rate under this section relies.

(c) Agency action. If a royalty rate is improperly calculated, the MMS will calculate the correct rate and inform the operator/payors. Any additional royalties due are payable immediately upon notification. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102. The BLM may terminate a royalty rate reduction if it is determined that the production rate was manipulated by the operator for the purpose of receiving a royalty rate reduction. Terminations of royalty rate reductions will be effective on the effective date of the royalty rate reduction resulting from the manipulated production rate (i.e., the termination will be retroactive to the effective date of the improper reduction). The operator/payor shall pay the difference in royalty resulting from the retroactive application of the unmanipulated rate. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102.

HISTORY: *[61 FR 4748, 4750,* Feb. 8, 1996; *70 FR 53072, 53074,* Sept. 7, 2005; *75 FR 61624, 61626,* Oct. 6, 2010]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *75 FR 61624, 61626,* Oct. 6, 2010, amended this section, effective Oct. 6, 2010.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3103.4-3

§ 3103.4-3 Heavy oil royalty reductions.

(a) Certification. The operator/payor must use the applicable royalty rate when submitting the required royalty reports/payments to the Minerals Management Service (MMS). In submitting royalty reports/payments using a royalty rate reduction, the operator/payor must certify that the API oil gravity for the initial and subsequent 12-month periods was not subject to manipulation or adulteration and the royalty rate was determined in accordance with the requirements and procedures.

(b) Agency action. If an operator/payor incorrectly calculates the royalty rate, the BLM will determine the correct rate and notify the operator/payor in writing. Any additional royalties due are payable to MMS immediately upon receipt of this notice. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102. The BLM will terminate a royalty rate reduction for a property if BLM determines that the API oil gravity was manipulated or adulterated by the operator/payor. Terminations of royalty rate reductions for individual properties will be effective on the effective date of the royalty rate reduction resulting from a manipulated or adulterated API oil gravity so that the termination will be retroactive to the effective date of the improper reduction. The operator/payor must pay the difference in royalty resulting from the retroactive application of the non-manipulated rate. The late payment or underpayment charges will assessed in accordance with 30 CFR 218.102.

HISTORY: *[61 FR 4748, 4750,* Feb. 8, 1996; *75 FR 61624, 61626,* Oct. 6, 2010]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *75 FR 61624, 61626,* Oct. 6, 2010, amended this section, effective Oct. 6, 2010.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3103.4-4

§ 3103.4-4 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption

shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

HISTORY: *[53 FR 17354,* May 16, 1988, as redesignated at *61 FR 4748, 4750,* Feb. 8, 1996]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *61 FR 4748, 4750,* Feb. 8, 1996, which redesignated this section, became effective March 11, 1996.]
[CROSS REFERENCE: This section was formerly § 3103.4-2.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

LexisNexis (R) Notes:

CASE NOTES

S. Utah Wilderness Alliance v. Palma, 707 F.3d 1143, 2013 U.S. App. LEXIS 464 (10th Cir Jan. 8, 2013).

Overview: *Suit challenging BLM decisions was premature because, pursuant to 5 U.S.C.S. § 704, there had not been a consummation of BLM's decisionmaking process sufficient to support litigation of the issue. What was characterized as the "reissuance" of leases, when BLM deemed them to be in suspension rather than terminated, were instead interim decisions.*

- Federal oil and gas leases are generally issued for a primary term of ten years, *30 U.S.C.S. § 226*(e), and suspension prevents the lease term from expiring while the conversion application is pending. *43 C.F.R. § 3103.4-4(b).* The Combined Hydrocarbon Leasing Act mandates that the Secretary shall act upon a proposed plan of operations within fifteen months of its submittal. *30 U.S.C.S. § 226*(n)(1)(B). Go To Headnote
- If a plan of operations is found acceptable and is approved, an oil and gas lease is converted into a combined hydrocarbon lease with a new effective start date and a new ten-year term. *43 C.F.R. §§ 3140.4-1*, *3140.4-2*, *3140.5*. If the application is rejected, then the lease suspension is lifted. *43 C.F.R. § 3140.2-3(g)(1)* (the lease term shall be suspended until the plan is finally approved or rejected). Thereafter, the original oil and gas lease remains valid until the expiration of its term, which is extended by the duration of the suspension. *43 C.F.R. § 3103.4-4(b).* Go To Headnote

S. Utah Wilderness Alliance v. Palma, 707 F.3d 1143, 2013 U.S. App. LEXIS 464 (10th Cir Jan. 8, 2013).

Overview: *Suit challenging BLM decisions was premature because, pursuant to 5 U.S.C.S. § 704, there had not been a consummation of BLM's decisionmaking process sufficient to support litigation of the issue. What was characterized as the "reissuance" of leases, when BLM deemed them to be in suspension rather than terminated, were instead interim decisions.*

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43 CFR 3104.1

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

HISTORY: *[53 FR 22838,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3104.2

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than $ 10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

HISTORY: *[53 FR 22839,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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LexisNexis (R) Notes:

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Monahan v. United States Doi, 2007 U.S. App. LEXIS 24211 (10th Cir Oct. 15, 2007).

Overview: *43 C.F.R. § 3100.0-5 classified the title holder's transfer of operating rights as a sublease, not an assignment. A sublease did not affect the relationship imposed by a lease between the lessee and the United States. Thus, under 30 U.S.C.S. § 187a, the sublease did not release the title holder of his lease obligations vis-a-vis the government.*

. The Bureau of Land Management regulations specify a lessee, owner of operating rights, sublessee, or operator may furnish a lease bond of not less than $ 10,000 for each lease, a statewide bond of $ 25,000 covering all leases and operations in any one state, or a nationwide bond of $ 150,000 covering all leases and operations nationwide. *43 C.F.R. §§ 3104.2*, *3104.3 (1988)*. The Bureau of Land Management's policy is not to closely scrutinize the financial state of transferees of operating rights, as opposed to transferees of record title, because the original lessee remains liable upon the default of the operator. Go To Headnote



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43 CFR 3104.3

§ 3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $ 25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $ 150,000 covering all leases and operations nationwide.

HISTORY: *[53 FR 22839,* June 17, 1988; *53 FR 31958,* Aug. 22, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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. The Bureau of Land Management regulations specify a lessee, owner of operating rights, sublessee, or operator may furnish a lease bond of not less than $ 10,000 for each lease, a statewide bond of $ 25,000 covering all leases and operations in any one state, or a nationwide bond of $ 150,000 covering all leases and operations nationwide. *43 C.F.R. §§ 3104.2, 3104.3 (1988).* The Bureau of Land Management's policy is not to closely scrutinize the financial state of transferees of operating rights, as opposed to transferees of record title, because the original lessee remains liable upon the default of the operator. Go To Headnote



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43 CFR 3104.4

§ 3104.4 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3104.1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3186.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

HISTORY: *[53 FR 22839,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

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43 CFR 3104.5

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

HISTORY: *[53 FR 22839,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3104.6

§ 3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of §§ 3104.2 and 3104.3(a) of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See § 1821.2-1).

HISTORY: *[53 FR 17354,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3104.7

§ 3104.7 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate or substitute bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by the authorized officer. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of § 3108.3 of this title.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17354,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3104.8

§ 3104.8 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease have been met.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17355,* May 16, 1988; *53 FR 31867,* Aug. 22, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.1

§ 3105.1 Cooperative or unit agreement.

The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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§ 3105.2 COMMUNITIZATION OR DRILLING AGREEMENTS.

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43 CFR 3105.2-1

§ 3105.2-1 Where filed.

(a) Requests to communitize separate tracts shall be filed, in triplicate, with the proper BLM office.

(b) Where a duly executed agreement is submitted for final Departmental approval, a minimum of 3 signed counterparts shall be submitted. If State lands are involved, 1 additional counterpart shall be submitted.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3105.2 COMMUNITIZATION OR DRILLING AGREEMENTS.

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43 CFR 3105.2-2

§ 3105.2-2 Purpose.

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it is in the public interest. Operations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3105.2 COMMUNITIZATION OR DRILLING AGREEMENTS.

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43 CFR 3105.2-3

§ 3105.2-3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under § 3107.4 of this title.

HISTORY: *[53 FR 17355,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.3-1

§ 3105.3-1 Where filed.

A contract submitted for approval under this section shall be filed with the proper BLM office, together with enough copies to permit retention of 5 copies by the Department after approval.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.3-2

§ 3105.3-2 Purpose.

Approval of operating, drilling or development contracts ordinarily shall be granted only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a scale large enough to justify the discovery, development, production or transportation of oil or gas and to finance the same.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.3-3

§ 3105.3-3 Requirements.

The contract shall be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan for development and operation of the field. All the contracts held by the same contractor in the area or field shall be submitted for approval at the same time and full disclosure of the projects made.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.4-1

§ 3105.4-1 Where filed.

An application under this section together with sufficient copies to permit retention of 5 copies by the Department after approval shall be filed with the proper BLM office.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 2113,* Jan. 18, 1984]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.4-2

§ 3105.4-2 Purpose.

Upon obtaining approval of the authorized officer, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing as a common carrier a pipeline or lines or railroads to be operated and used by them jointly in the transportation of oil or gas from their wells or from the wells of other lessees.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.4-3

§ 3105.4-3 Requirements.

The application shall show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of law.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.4-4

§ 3105.4-4 Rights-of-way.

Rights-of-way for pipelines may be granted as provided in part 2880 of this title.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3105.5 SUBSURFACE STORAGE OF OIL AND GAS.

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43 CFR 3105.5-1

§ 3105.5-1 Where filed.

(a) Applications for subsurface storage shall be filed in the proper BLM office.

(b) Enough copies of the final agreement signed by all the parties in interest shall be submitted to permit the retention of 5 copies by the Department after approval.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.5-2

§ 3105.5-2 Purpose.

In order to avoid waste and to promote conservation of natural resources, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil and gas, whether or not produced from lands owned by the United States. Such authorization shall provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.5-3

§ 3105.5-3 Requirements.

The agreement shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental or royalty offered to be paid for such storage and all essential information showing the necessity for such project.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3105.5-4

§ 3105.5-4 Extension of lease term.

Any lease used for the storage of oil or gas shall be extended for the period of storage under an approved agreement. The obligation to pay annual lease rent continues during the extended period.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3105.5 SUBSURFACE STORAGE OF OIL AND GAS.

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43 CFR 3105.6

§ 3105.6 Consolidation of leases.

BLM may approve consolidation of leases if we determine that there is sufficient justification and it is in the public interest. Each application for a consolidation of leases must include payment of the processing fee found in the fee schedule in § 3000.12 of this chapter. Leases to different lessees for different terms, rental and royalty rates, and those containing provisions required by law that cannot be reconciled, shall not be consolidated. The effective date of a consolidated lease shall be that of the oldest lease involved in the consolidation.

HISTORY: *[53 FR 17355,* May 16, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, amended this section, effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3106.1

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved.

(b) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. Execution and submission of a request for approval of such an assignment shall certify that the assignment would further the development of oil and gas, subject to the provisions of § 3102.5-3 of this title. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect. A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests shall be filed in the proper BLM office but shall not require approval.

(c) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

HISTORY: *[53 FR 22839,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3106.2

§ 3106.2 Qualifications of transferees.

Transferees shall comply with the provisions of subpart 3102 of this title and post any bond that may be required.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3106.3

§ 3106.3 Fees.

Each transfer of record title or of operating rights (sublease) for each lease must include payment of the processing fee for assignments and transfers found in the fee schedule in § 3000.12 of this chapter. Each request for a transfer to an heir or devisee, request for a change of name, or notification of a corporate merger under § 3106.8, must include payment of the processing fee for name changes, corporate mergers or transfers to heir/devisee found in the fee schedule in § 3000.12 of this chapter. Each transfer of overriding royalty or payment out of production must include payment of the processing fee for overriding royalty transfers or payments out of productions found in the fee schedule in § 3000.12 of this chapter for each lease to which it applies.

HISTORY: *[53 FR 17355,* May 16, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, revised this section, effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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§ 3106.4 FORMS.

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43 CFR 3106.4-1

§ 3106.4-1 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) shall be filed with the proper BLM office on a current form approved by the Director or exact reproductions of the front and back of such form. A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. A separate form for each transfer, in triplicate, originally executed shall be filed for each lease out of which a transfer is made. Only 1 originally executed copy of a transferee's request for approval for each transfer shall be required, including in those instances where several transfers to a transferee have been submitted at the same time (See also § 3106.4-3). Copies of documents other than the current form approved by the Director shall not be submitted. However, reference(s) to other documents containing information affecting the terms of the transfer may be made on the submitted form.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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CASE NOTES

Shell Oil Co. v. Babbitt, 945 F. Supp. 792, 1996 U.S. Dist. LEXIS 17274 (D Del Nov. 14, 1996).

Overview: *Under the federal government's oil and gas royalty management authority, an oil company, which was a first purchaser of crude oil, was required to disclose documents pertaining to its resale of crude oil to a third party.*

. There is such an entity which is not a lessee or an operator or a royalty payor but still has paying or operating responsibility, a company that is not the designated operator of the lease but which holds operating rights from the lessee. Operating rights are occasionally delegated in onshore oil and gas leases and are regulated by the Department Bureau of Land Management at *43 C.F.R. § 3106.4-1 (1988).* Go To Headnote

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§ 3106.4 FORMS.

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43 CFR 3106.4-2

§ 3106.4-2 Transfers of other interests, including royalty interests and production payments.

(a) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease in conjunction with a transfer of record title or of operating rights (sublease) shall be described for each lease on the current form when filed.

(b) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease independently of a transfer of record title or of operating rights (sublease), if not filed on the current form, shall be described and shall include the transferee's executed statement as to his/her qualifications under subpart 3102 of this title. A single executed copy of each such transfer of other interests for each lease shall be filed with the proper BLM office.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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CASE NOTES Applicable to entire Part:Part Note



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43 CFR 3106.4-3

§ 3106.4-3 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of §§ 3106.4-1 and 3106.4-2 of this title when a transferor transfers interests of any type in a large number of Federal leases to the same transferee.

(b) Three originally executed copies of the mass transfer shall be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer shall be on a current form approved by the Director or an exact reproduction of both sides thereof, with an exhibit attached to each copy listing the following for each lease:

(1) The serial number;

(2) The type and percent of interest being conveyed; and

(3) A description of the lands affected by the transfer in accordance with § 3106.5 of this title.

(c) One reproduced copy of the form required by paragraph (b) of this section shall be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section.

(d) Include with your mass transfer the processing fee for assignments and transfers found in the fee schedule in § 3000.12 of this chapter for each such interest transferred for each lease.

HISTORY: *[53 FR 17355,* May 16, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, revised paragraph (d), effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3106.5

§ 3106.5 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease or in the manner required by § 3110.5 of this title, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *55 FR 12350,* Apr. 3, 1990]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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§ 3106.6 BONDS.

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43 CFR 3106.6-1

§ 3106.6-1 Lease bond.

Where a lease bond is maintained by the lessee or operating rights owner (sublessee) in connection with a particular lease, the transferee of record title interest or operating rights in such lease shall furnish, if bond coverage continues to be required, either a proper bond or consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent. Where bond coverage is provided by an operator, the new operator shall furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3106.6 BONDS.

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43 CFR 3106.6-2

§ 3106.6-2 Statewide ationwide bond.

If the transferee is maintaining a statewide or nationwide bond, a lease bond shall not be required, but the amount of the bond may be increased to an amount determined by the authorized officer in accordance with the provisions of § 3104.5 of this title.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3106.7 APPROVAL OF TRANSFER.

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43 CFR 3106.7-1

§ 3106.7-1 Failure to qualify.

No transfer of record title or of operating rights (sublease) shall be approved if the transferee or any other parties in interest are not qualified to hold the transferred interest(s), or if the bond, should one be required, is insufficient. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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§ 3106.7 APPROVAL OF TRANSFER.

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43 CFR 3106.7-2

§ 3106.7-2 If I transfer my lease, what is my continuing obligation?

(a) You are responsible for performing all obligations under the lease until the date BLM approves an assignment of your record title interest or transfer of your operating rights.

(b) After BLM approves the assignment or transfer, you will continue to be responsible for lease obligations that accrued before the approval date, whether or not they were identified at the time of the assignment or transfer. This includes paying compensatory royalties for drainage. It also includes responsibility for plugging wells and abandoning facilities you drilled, installed, or used before the effective date of the assignment or transfer.

HISTORY: *[53 FR 17355,* May 16, 1988; *66 FR 1883, 1892,* Jan. 10, 2001; *66 FR 9527,* Feb. 8, 2001]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *66 FR 1883, 1892,* Jan. 10, 2001, revised this section, effective Feb. 9, 2001; *66 FR 9527,* Feb. 8, 2001, delayed the effective date of the amendment appearing at *66 FR 1883, 1892,* Jan. 10, 2001, until Apr. 10, 2001.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

LexisNexis (R) Notes:

CASE NOTES

In re Redwine Res., Inc., 2010 Bankr. LEXIS 6105 (Bankr ND Tex Dec. 22, 2010).

Overview: *Debtors' motion for an order authorizing the sale of residual assets to the company, free and clear of liens and other interests, was granted because the relief sought was in the best interests of the debtors, their estates, creditors, and all other parties in interest, and the debtors established the legal and factual bases for the relief granted.*

- If an assignment is approved by the United States, the debtors will continue to be responsible for lease obligations that accrued before the approval date as provided for in *43 C.F.R. § 3106.7-2*. Go To Headnote

Monahan v. United States Doi, 2007 U.S. App. LEXIS 24211 (10th Cir Oct. 15, 2007).

Overview: *43 C.F.R. § 3100.0-5 classified the title holder's transfer of operating rights as a sublease, not an assignment. A sublease did not affect the relationship imposed by a lease between the lessee and the United States. Thus, under 30 U.S.C.S. § 187a, the sublease did not release the title holder of his lease obligations vis-a-vis the government.*

- An "assignment" is defined as a transfer of all or a portion of the lessee's record title interest in a lease. *43 C.F.R. § 3100.0-5(e)*. A "sublease" is defined as a transfer of a non-record title interest in a lease, a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee. A sublease does not affect the relationship imposed by a lease between the lessees and the United States. Under *43 C.F.R. § 3106.7-2*, a lessee can transfer his lease, but has a continuing obligation to the lessor, the government, even upon approval of the transfer. Go To Headnote



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§ 3106.7 APPROVAL OF TRANSFER.

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43 CFR 3106.7-3

§ 3106.7-3 Lease account status.

A transfer of record title or of operating rights (sublease) in a producing lease shall not be approved unless the lease account is in good standing.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

CASE NOTES Applicable to entire Part:Part Note



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43 CFR 3106.7-4

§ 3106.7-4 Effective date of transfer.

The signature of the authorized officer on the official form shall constitute approval of the transfer of record title or of operating rights (sublease) which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3106.7-5

§ 3106.7-5 Effect of transfer.

A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases.

HISTORY: *53 FR 17355,* May 16, 1988.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3106.7-6

§ 3106.7-6 If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?

(a) If you acquire record title interest in a Federal lease, you agree to comply with the terms of the original lease during your lease tenure. You assume the responsibility to plug and abandon all wells which are no longer capable of producing, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known at the time. You must also maintain an adequate bond to ensure performance of these responsibilities.

(b) If you acquire operating rights in a Federal lease, you agree to comply with the terms of the original lease as it applies to the area or horizons in which you acquired rights. You must plug and abandon all unplugged wells, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known at the time you receive the transfer. You must also maintain an adequate bond to ensure performance of these responsibilities.

HISTORY: *[66 FR 1883, 1892,* Jan. 10, 2001; *66 FR 9527,* Feb. 8, 2001]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *66 FR 1883, 1892,* Jan. 10, 2001, added this section, effective Feb. 9, 2001; *66 FR 9527,* Feb. 8, 2001, delayed the effective date of the amendment appearing at *66 FR 1883, 1892,* Jan. 10, 2001, until Apr. 10, 2001.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

LexisNexis (R) Notes:

CASE NOTES

Burnsed Oil Co., Inc. v. Grynberg, 2008 U.S. Dist. LEXIS 31147 (SD Miss Mar. 31, 2008), affirmed in part and reversed in part by *320 Fed. Appx. 222, 2009 U.S. App. LEXIS 6331 (5th Cir. Miss. 2009).*

Overview: *An overriding royalty interest clause in a public oil-and-gas lease was declared enforceable under Mississippi law even though it incorporated the terms of a federal regulation, 43 C.F.R. § 192.83, that was repealed many years before because the repeal was not retroactively effective, making the regulation a binding contract term under state law.*

- According to *43 C.F.R. § 3106.7-6(b)*, when a person acquires a federal lease by assignment or transfer, the person must agree to comply with the terms of the original lease as it applies to the area or horizons in which that person acquired rights. Go To Headnote

Monahan v. United States Doi, 2007 U.S. App. LEXIS 24211 (10th Cir Oct. 15, 2007).

Overview: *43 C.F.R. § 3100.0-5 classified the title holder's transfer of operating rights as a sublease, not an assignment. A sublease did not affect the relationship imposed by a lease between the lessee and the United States. Thus, under 30 U.S.C.S. § 187a, the sublease did not release the title holder of his lease obligations vis-a-vis the government.*

- The Mineral Leasing Act of 1920, *30 U.S.C.S. § 181* et seq., specifically authorizes the Secretary of the Interior to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of *30 U.S.C.S. § 181* et seq. *30 U.S.C.S. § 189.* Under *43 C.F.R. § 3106.7-6(a) (2001)*, a person who acquires record title to a lease assumes responsibility for plugging and abandoning non-producing wells, reclaiming the lease site, and remedying existing environmental problems. Go To Headnote



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§ 3106.8 OTHER TYPES OF TRANSFERS.

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43 CFR 3106.8-1

§ 3106.8-1 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. Include the processing fee for transfers to heir/devisee found in the fee schedule in § 3000.12 of this chapter with your request to transfer lease rights. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

(b) Any ownership or interest otherwise forbidden by the regulations in this group which may be acquired by descent, will, judgement or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition shall be subject to cancellation.

HISTORY: *[53 FR 17355,* May 16, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, amended paragraph (a), effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of

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§ 3106.8 OTHER TYPES OF TRANSFERS.

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43 CFR 3106.8-2

§ 3106.8-2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. Include the processing fee for name change found in the fee schedule in § 3000.12 of this chapter with your notice of name change. If a bond(s) has been furnished, change of name may be made by surety consent or a rider to the original bond or by a replacement bond.

HISTORY: *[53 FR 17355,* May 16, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, amended this section, effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
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§ 3106.8 OTHER TYPES OF TRANSFERS.

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43 CFR 3106.8-3

§ 3106.8-3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease interest is required. A notification of the merger shall be furnished with a list, by serial number, of all lease interests affected. Include the processing fee for corporate merger found in the fee schedule in § 3000.12 of this chapter with your notification of a corporate merger. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the authorized officer as a prerequisite to recognition of the merger.

HISTORY: *[53 FR 17355,* May 16, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, amended this section, effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3107.1

§ 3107.1 Extension by drilling.

Any lease on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term or any lease which is part of an approved communitization agreement or cooperative or unit plan of development or operation upon which such drilling takes place, shall be extended for 2 years subject to the rental being timely paid as required by § 3103.2 of this title, and subject to the provisions of § 3105.2-3 and § 3186.1 of this title, if applicable. Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at least 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 2113,* Jan. 18, 1984; *53 FR 17357,* May 16, 1988; *53 FR 22839,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3107.2 PRODUCTION.

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43 CFR 3107.2-1

§ 3107.2-1 Continuation by production.

A lease shall be extended so long as oil or gas is being produced in paying quantities.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3107.2 PRODUCTION.

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43 CFR 3107.2-2

§ 3107.2-2 Cessation of production.

A lease which is in its extended term because of production in paying quantities shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17357,* May 16, 1988; *53 FR 22840,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3107.2 PRODUCTION.

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43 CFR 3107.2-3

§ 3107.2-3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. Such production shall be continued unless and until suspension of production is granted by the authorized officer.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 22840,* June 17, 1988; *53 FR 31958,* Aug. 22, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3107.3-1

§ 3107.3-1 Leases committed to plan.

Any lease or portion of a lease, except as described in § 3107.3-3 of this title, committed to a cooperative or unit plan that contains a general provision for allocation of oil or gas shall continue in effect so long as the lease or portion thereof remains subject to the plan; Provided, That there is production of oil or gas in paying quantities under the plan prior to the expiration date of such lease.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3107.3-2

§ 3107.3-2 Segregation of leases committed in part.

Any lease committed after July 29, 1954, to any cooperative or unit plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan, the other lands not committed to the plan. The segregated lease covering the nonunitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer. However, for any lease segregated from a unit, if the public interest requirement for the unit is not satisfied, such segregation shall be declared invalid by the authorized officer. Further, the segregation shall be conditioned to state that no operations shall be approved on the segregated portion of the lease past the expiration date of the original lease until the public interest requirement of the unit has been satisfied.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17357,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3107.3-3

§ 3107.3-3 20-year lease or any renewal thereof.

Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3107.4

§ 3107.4 Extension by elimination.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the Act and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease or for 2 years after its elimination from the plan or agreement or after the termination of the plan or agreement, whichever is longer, and for so long thereafter as oil or gas is produced in paying quantities. No lease shall be extended if the public interest requirement for an approved cooperative or unit plan or a communitization agreement has not been satisifed as determined by the authorized officer.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17357,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3107.5-1

§ 3107.5-1 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for 2 years after the date of first discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3107.5-2

§ 3107.5-2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term shall continue in effect for 2 years after the effective date of assignment, provided the parent lease was issued prior to September 2, 1960.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3107.5-3

§ 3107.5-3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for 2 years after the effective date of assignment and for so long thereafter as oil or gas is produced in paying quantities.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
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43 CFR 3107.6

§ 3107.6 Extension of reinstated leases.

Where a reinstatement of a terminated lease is granted under § 3108.2 of this title and the authorized officer finds that the reinstatement will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of such lease for a period sufficient to give the lessee such an opportunity. Any extension shall be subject to the following conditions:

(a) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(b) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition, but in no event for more than 2 years from the date the reinstatement is authorized and so long thereafter as oil or gas is produced in paying quantities.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 30448,* July 30, 1984; *53 FR 17357,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3107.7

§ 3107.7 Exchange leases: 20-year term.

Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease shall be issued for a primary term of 5 years. The lessee must file an application to exchange a lease for a new lease, in triplicate, at the proper BLM office. The application must show full compliance by the applicant with the terms of the lease and applicable regulations, and must include payment of the processing fee for lease renewal or exchange found in the fee schedule in § 3000.12 of this chapter. Execution of the exchange lease by the applicant is certification of compliance with § 3102.5 of this title.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 22840,* June 17, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, amended this section, effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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§ 3107.8 RENEWAL LEASES.

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43 CFR 3107.8-1

§ 3107.8-1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee, and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations.

(b) The applicant or his/her operator shall furnish, in triplicate, with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration.

HISTORY: *[48 FR 33662,* July 22, 1988, as amended at *53 FR 22840,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3107.8-2

§ 3107.8-2 Application.

File your application to renew your lease in triplicate in the proper BLM office at least 90 days, but not more than 6 months, before your lease expires. Include the processing fee for lease renewal or exchange found in the fee schedule in § 3000.12 of this chapter.

HISTORY: *[48 FR 33662,* July 22, 1983; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, revised this section, effective Nov. 7, 2005.]

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§ 3107.8 RENEWAL LEASES.

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43 CFR 3107.8-3

§ 3107.8-3 Approval.

(a) Copies of the renewal lease, in triplicate, dated the first day of the month following the month in which the original lease terminated, shall be forwarded to the lessee for execution. Upon receipt of the executed lease forms, which constitutes certification of compliance with § 3102.5 of this title, and any required bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

(b) If overriding royalties and payments out of production or similar interests in excess of 5 percent of gross production constitute a burden to lease operations that will retard, or impair, or cause premature abandonment, the lease application shall be suspended until overriding royalties and payments out of production or similar interests are reduced to not more then 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon, a final decision will be rendered by the Department, outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production and an opportunity shall be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal shall be denied.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17357,* May 16, 1988; *53 FR 22840,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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§ 3107.9 OTHER TYPES.

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43 CFR 3107.9-1

§ 3107.9-1 Payment of compensatory royalty.

The payment of compensatory royalty shall extend the term of any lease for the period during which such compensatory royalty is paid and for a period of 1 year from the discontinuance of such payments.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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§ 3107.9 OTHER TYPES.

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43 CFR 3107.9-2

§ 3107.9-2 Subsurface storage of oil and gas.

See § 3105.5-4 of this title.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3108.1

§ 3108.1 As a lessee, may I relinquish my lease?

You may relinquish your lease or any legal subdivision of your lease at any time. You must file a written relinquishment with the BLM State Office with jurisdiction over your lease. All lessees holding record title interests in the lease must sign the relinquishment. A relinquishment takes effect on the date you file it with BLM. However, you and the party that issued the bond will continue to be obligated to:

(a) Make payments of all accrued rentals and royalties, including payments of compensatory royalty due for all drainage that occurred before the relinquishments;

(b) Place all wells to be relinquished in condition for suspension or abandonment as BLM requires; and

(c) Complete reclamation of the leased sites after stopping or abandoning oil and gas operations on the lease, under a plan approved by the appropriate surface management agency.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17357,* May 16, 1988; *53 FR 22840,* June 17, 1988; *66 FR 1883, 1892,* Jan. 10, 2001; *66 FR 9527,* Feb. 8, 2001]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *66 FR 1883, 1892,* Jan. 10, 2001, revised this section, effective Feb. 9, 2001; *66 FR 9527,* Feb. 8, 2001, delayed the effective date of the amendment appearing at *66 FR 1883, 1892,* Jan. 10, 2001, until Apr. 10, 2001.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]



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43 CFR 3108.2-1

§ 3108.2-1 Automatic termination.

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law *(30 U.S.C. 188)* if the lessee fails to pay the rental at the designated Service office on or before the anniversary date of such lease. However, if the designated Service office is closed on the anniversary date, a rental payment received on the next day the Service office is open to the public shall be considered as timely made.

(b) If the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in a bill rendered by the designated Service office, or decision rendered by the authorized officer, and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency shall be considered nominal if it is not more than $ 100 or more than 5 percent of the total payment due, whichever is less. The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office. If the payment required by the Notice is not paid within the time allowed, the lease shall have terminated by operation of law as of its anniversary date.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *49 FR 11637,* Mar. 27, 1984; *49 FR 30448,* July 30, 1984; *53 FR 17357,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

LexisNexis (R) Notes:

CASE NOTES

Western Energy Res., Inc. v. Kempthorne, 2009 U.S. Dist. LEXIS 3115 (D Colo Jan. 16, 2009).

Overview: *Petition for reinstatement of oil and gas leases--which, pursuant to 30 U.S.C.S. § 188(b), were terminated by operation of law for late payment--was denied because BLM's failure to give notice of legislated opportunity to remedy late payments was not conclusive. Lessee was charged with constructive notice of enactment of the remedial legislation.*

. Section 31(b) of the Mineral Leasing Act, *30 U.S.C.S. § 188*(b), provides that, upon the failure of a lessee to pay rental on or before the anniversary date of an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities, the lease terminates automatically by operation of law. *43 C.F.R. § 3108.2-1(a) (2006).* The department takes no action to cause such termination; it occurs when a lessee fails to pay rental timely. Go To Headnote

LexisNexis (R) Notes:

RESEARCH GUIDES 1-8(I) Bender's Federal Practice Forms, (Matthew Bender), Rule 8(I). General Rules of Pleading --"Accounting" through "Civil Rights", Form No. 8(I):103 Complaint to Compel Reinstatement of Oil and Gas Lease.



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43 CFR 3108.2-2

§ 3108.2-2 Reinstatement at existing rental and royalty rates: Class I reinstatements.

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and

(3) A petition for reinstatement, the processing fee for lease reinstatement, Class I, found in the fee schedule in § 3000.12 of this chapter, and the required rental, including any back rental that has accrued from the date of the termination of the lease, are filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental. If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued shall be paid to the Service.

(b) The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee.

(c) Under no circumstances shall a terminated lease be reinstated if:

(1) A valid oil and gas lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by that terminated lease; or

(2) The oil and gas interests of the United States in the lands have been disposed of or otherwise have become unavailable for leasing.

(d) The authorized officer shall not issue a lease for lands which have been covered by a lease which terminated automatically until 90 days after the date of termination.

HISTORY: *[49 FR 30448,* July 30, 1984, as amended at *53 FR 17357,* May 16, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, revised the first sentence of paragraph (a)(3), effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note

Western Energy Res., Inc. v. Kempthorne, 2009 U.S. Dist. LEXIS 3115 (D Colo Jan. 16, 2009).

Overview: *Petition for reinstatement of oil and gas leases--which, pursuant to 30 U.S.C.S. § 188(b), were terminated by operation of law for late payment--was denied because BLM's failure to give notice of legislated opportunity to remedy late payments was not conclusive. Lessee was charged with constructive notice of enactment of the remedial legislation.*

. Mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. *43 C.F.R. § 3108.2-2(a).* Go To Headnote

Western Energy Res., Inc. v. Kempthorne, 2009 U.S. Dist. LEXIS 3115 (D Colo Jan. 16, 2009).

Overview: *Petition for reinstatement of oil and gas leases--which, pursuant to 30 U.S.C.S. § 188(b), were terminated by operation of law for late payment--was denied because BLM's failure to give notice of legislated opportunity to remedy late payments was not conclusive. Lessee was charged with constructive notice of enactment of the remedial legislation.*

- The burden of proof for Class I lease reinstatement is stated in the regulations at *43 C.F.R. § 3108.2-2(b)*: The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee. Go To Headnote
- Mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. *43 C.F.R. § 3108.2-2(a)*. Go To Headnote

Western Energy Res., Inc. v. Kempthorne, 2009 U.S. Dist. LEXIS 3115 (D Colo Jan. 16, 2009).

Overview: *Petition for reinstatement of oil and gas leases--which, pursuant to 30 U.S.C.S. § 188(b), were terminated by operation of law for late payment--was denied because BLM's failure to give notice of legislated opportunity to remedy late payments was not conclusive. Lessee was charged with constructive notice of enactment of the remedial legislation.*

- Federal leases terminated automatically by operation of law for failure to pay rental timely may be reinstated under two separate provisions of law. *30 U.S.C.S. § 188*(c) authorizes the Secretary to reinstate a lease only if the rental payment is paid or tendered within 20 days after the due date and the lessee establishes that the failure to timely pay was either justifiable or not due to a lack of reasonable diligence. Reinstatement under this provision, at existing rental and royalty rates, is a Class I reinstatement. *43 C.F.R. § 3108.2-2 (2005)*. Go To Headnote



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43 CFR 3108.2-3

§ 3108.2-3 Reinstatement at higher rental and royalty rates: Class II reinstatements.

(a) The authorized officer may, if the requirements of this section are met, reinstate an oil and gas lease which was terminated by operation of law for failure to pay rental timely when the rental was not paid or tendered within 20 days of the termination date and it is shown to the satisfaction of the authorized officer that such failure was justified or not due to a lack of reasonable diligence, or no matter when the rental was paid, it is shown to the satisfaction of the authorized officer that such failure was inadvertent.

(b)(1) Leases that terminate on or before August 8, 2005, may be reinstated if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty days after the receipt of the Notice of Termination sent to the lessee of record, whether by return of check or any form of actual notice; or

(ii) Fifteen months after termination of the lease.

(2) Leases that terminate after August 8, 2005 may be reinstated if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty days after the last date that any lessee of record received Notice of Termination by certified mail; or

(ii) Twenty four months after termination of the lease.

(3) After determining that the requirements for filing of the petition for reinstatement have been timely met, the authorized officer may reinstate the lease if:

(i) No valid lease has been issued prior to the filing of the petition for reinstatement affecting any of the lands covered by the terminated lease, whether such lease is still in effect or not;

(ii) The oil and gas interests of the United States in the lands have not been disposed of or have not otherwise become unavailable for leasing;

(iii) Payment of all back rentals and royalties at the rates established for the reinstated lease, including the release to the United States of funds being held in escrow, as appropriate;

(iv) An agreement has been signed by the lessee and attached to and made a part of the lease specifying future rentals at the applicable rates specified for reinstated leases in § 3103.2-2 of this title and future royalties at the rates set in § 3103.3-1 of this title for all production removed or sold from such lease or shared by such lease from production allocated to the lease by virtue of its participation in a unit or communitization agreement or other form of approved joint development agreement or plan;

(v) A notice of the proposed reinstatement of the terminated lease and the terms and conditions of reinstatement has been published in the Federal Register at least 30 days prior to the date of reinstatement for which the lessee shall reimburse the Bureau for the full costs incurred in the publishing of said notice; and

(vi) The lessee has paid the Bureau a nonrefundable administrative fee of $ 500.

(c) The authorized officer shall not, after the receipt of a petition for reinstatement, issue a new lease affecting any of the lands covered by the terminated lease until all action on the petition is final.

(d) The authorized officer shall furnish to the Chairpersons of the Committee on Interior and Insular Affairs of the House of Representatives and of the Committee on Energy and Natural Resources of the Senate, at least 30 days prior to the date of reinstatement, a copy of the notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the authorized officer considers significant in making the determination to reinstate.

(e) If the authorized officer reinstates the lease, the reinstatement shall be as of the date of termination, for the unexpired portion of the original lease or any extension thereof remaining on the date of termination, and so long thereafter as oil or gas is produced in paying quantities. Where a lease is reinstated under this section and the authorized officer finds that the reinstatement of such lease either (1) occurs after the expiration of the primary term or any extension thereof, or (2) will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of the reinstated lease for such period as determined reasonable, but in no event for more than 2 years from the date of the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(f) The authorized officer may, either in acting on a petition for reinstatement or in response to a request filed after reinstatement, or both, reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes, if he/she determines there are either economic or other circumstances which could cause undue economic hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the lands covered by the lease after the rental had become due and had not been paid; or if the authorized officer determines it is equitable to do so for any other reason.

HISTORY: *[49 FR 30449,* July 30, 1984; *71 FR 14821, 14823,* Mar. 24, 2006]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *71 FR 14821, 14823,* Mar. 24, 2006, amended paragraph (b), effective Mar. 24, 2006.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of

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Western Energy Res., Inc. v. Kempthorne, 2009 U.S. Dist. LEXIS 3115 (D Colo Jan. 16, 2009).

Overview: *Petition for reinstatement of oil and gas leases--which, pursuant to 30 U.S.C.S. § 188(b), were terminated by operation of law for late payment--was denied because BLM's failure to give notice of legislated opportunity to remedy late payments was not conclusive. Lessee was charged with constructive notice of enactment of the remedial legislation.*

. Section 371(b) of the Energy Policy Act of August 8, 2005, amended *30 U.S.C.S. § 188*(d)(2)(A) to provide that for leases terminated on or before August 8, 2005, a proper petition for reinstatement had to be filed on or before the earlier of (i) 60 days after the lessee receives from the Secretary notice of termination whether by return check or by any other form of actual notice; or (ii) 15 months after the termination of the lease. Pub. L. No. 109-58, *119 Stat. 594, 734; 43 C.F.R. § 3108.2-3(b)(1)*. However, notwithstanding language from § 371(b), § 371(a) of the Energy Policy Act provided that, subject to certain conditions, the Secretary of the Interior could reinstate any oil and gas lease that terminated for failure of a lessee to pay the full amount of rental on or before the anniversary date of the lease, during the period beginning on September 1, 2001, and ending on June 30, 2004, subject to certain conditions. The conditions were that, not later than 120 days following enactment of the Act, the lessee (1) files a petition for reinstatement; (2) complies with the requirements of *30 U.S.C.S. § 188*(e) regarding payment, of rentals and royalties; and (3) certifies that it did not receive a notice of termination by the date that was 13 months before the date of termination. Pub. L. No. 109-58, § 37.1, *119 Stat. 594, 734* (Aug. 8, 2005). Go To Headnote

Western Energy Res., Inc. v. Kempthorne, 2009 U.S. Dist. LEXIS 3115 (D Colo Jan. 16, 2009).

Overview: *Petition for reinstatement of oil and gas leases--which, pursuant to 30 U.S.C.S. § 188(b), were terminated by operation of law for late payment--was denied because BLM's failure to give notice of legislated opportunity to remedy late payments was not conclusive. Lessee was charged with constructive notice of enactment of the remedial legislation.*

. Section 401 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), codified in part at *30 U.S.C.S. § 188*(d), permits reinstatement of leases not eligible under the provisions of the Act of May 12, 1970, *30 U.S.C.S. § 188*(c), provided the lessee shows that failure to timely pay was "inadvertent." Reinstatement under § 401 of FOGRMA, at higher rental and royalty rates, is a Class II reinstatement. *43 C.F.R. § 3108.2-3(2005)*. However, no lease terminated on or after January 12, 1983, was eligible for reinstatement unless the petition for reinstatement, together with required back rental and royalty accruing from the date of termination, was filed on or before the earlier of 60 days following receipt of notice of termination or 15 months after termination of the lease. *43 C.F.R. § 3108.2-3(b)(2005)*; *30 U.S.C.S. § 188*(d)(2)(B). Go To Headnote

Western Energy Res., Inc. v. Kempthorne, 2009 U.S. Dist. LEXIS 3115 (D Colo Jan. 16, 2009).

Overview: *Petition for reinstatement of oil and gas leases--which, pursuant to 30 U.S.C.S. § 188(b), were terminated by operation of law for late payment--was denied because BLM's failure to give notice of legislated opportunity to remedy late payments was not conclusive. Lessee was charged with constructive notice of enactment of the remedial legislation.*

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43 CFR 3108.2-4

§ 3108.2-4 Conversion of unpatented oil placer mining claims: Class III reinstatements.

(a) For any unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, and has been or is deemed after January 12, 1983, conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act *(43 U.S.C. 1744),* and it is shown to the satisfaction of the authorized officer that such failure was inadvertent, justifiable or not due to lack of reasonable diligence on the part of the owner, the authorized officer may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease consistent with the provisions of section 17(e) of the Act *(30 U.S.C. 226*(e)). The effective date of any lease issued under this section shall be from the statutory date that the claim was deemed conclusively abandoned.

(b) The authorized officer may issue a noncompetitive oil and gas lease if a petition has been filed in the proper BLM office for the issuance of a noncompetitive oil and gas lease accompanied by the required rental and royalty, including back rental and royalty accruing, at the rates specified in §§ 3103.2-2 and 3103.3-1 of this title, for any claim deemed conclusively abandoned after January 12, 1983. The petition shall have been filed on or before the 120th day after the final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim.

(c) The authorized officer shall not issue a noncompetitive oil and gas lease under this section if a valid oil and gas lease has been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of the petition for issuance of a noncompetitive oil and gas lease.

(d) After the filing of a petition for issuance of a noncompetitive oil and gas lease covering an abandoned oil placer claim, the authorized officer shall not issue any new lease affecting any lands covered by such petition until all action on the petition is final.

(e) Any noncompetitive lease issued under this section shall include:

(1) Terms and conditions for the payment of rental in accordance with § 3103.2-2(j) of this title. Payment of back rentals accruing from the date of abandonment of the oil placer mining claim, at the rental set by the authorized officer, shall be made prior to the lease issuance.

(2) Royalty rates set in accordance with § 3103.3-1 of this title. Royalty shall be paid at the rate established by the authorized officer on all production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the date the claim was deemed conclusively abandoned prior to the lease issuance.

(f) Noncompetitive oil and gas leases issued under this section shall be subject to all regulations in part 3100 of this title except for those terms and conditions mandated by Title IV of the Federal Oil and Gas Royalty Management Act.

(g) A notice of the proposed conversion of the oil placer mining claim into a noncompetitive oil and gas lease, including the terms and conditions of conversion, shall be published in the FEDERAL REGISTER at least 30 days prior to the issuance of a noncompetitive oil and gas lease. The mining claim owner shall reimburse the Bureau for the full costs incurred in the publishing of said notice.

(h) The mining claim owner shall pay the Bureau a nonrefundable administrative fee of $ 500 prior to the issuance of the noncompetitive lease.

(i) The authorized officer may, either in acting on a petition to issue a noncompetitive oil and gas lease or in response to a request filed after issuance, or both, reduce the royalty in such lease, if he/she determines there are either economic or other circumstances which could cause undue economic hardship or premature termination of production.

HISTORY: *[49 FR 30449,* July 30, 1984, as amended at *53 FR 17357,* May 16, 1988; *53 FR 22840,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

CASE NOTES Applicable to entire Part:Part Note

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43 CFR 3108.3

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

(d) Leases shall be subject to cancellation if improperly issued.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 22840,* June 17, 1988; *53 FR 31868,* Aug. 22, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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Naartex Consulting Corp. v. Watt, 722 F.2d 779, 1983 U.S. App. LEXIS 14944 (DC Cir Nov. 29, 1983).

Overview: *The dismissal of the claims against the private defendants and the government was proper because the district court lacked personal jurisdiction over the indispensable parties to the action to hale them before the district court.*

- *43 C.F.R. § 3108.3(c) (1982)*: A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. Go To Headnote

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- *43 C.F.R. § 3108.3(b) (1982)* provides: A lease known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in § 27 and 31 of the Mineral Lands Leasing Act of 1920. Go To Headnote

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43 CFR 3108.4

§ 3108.4 Bona fide purchasers.

A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers shall be charged with constructive notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease. Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation by a predecessor of any provisions of the act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a bona fide purchaser.

HISTORY: *[48 FR 33662,* July 22, 1983; *48 FR 39225,* Aug. 30, 1983, as amended at *53 FR 17357,* May 16, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

CASE NOTES Applicable to entire Part:Part Note

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43 CFR 3108.5

§ 3108.5 Waiver or suspension of lease rights.

If, during any proceeding with respect to a violation of any provisions of the regulations in Groups 3000 and 3100 of this title or the act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

HISTORY: *[53 FR 17357,* May 16, 1988; *53 FR 22840,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3109.1-1

§ 3109.1-1 Generally.

The Act of May 21, 1930 *(30 U.S.C. 301*-306), authorizes either the leasing of oil and gas deposits under railroad and other rights-of-way to the owner of the right-of-way or the entering of a compensatory royalty agreement with adjoining landowners. This authority shall be exercised only with respect to railroad rights-of-way and easements issued pursuant either to the Act of March 3, 1875 *(43 U.S.C. 934* et seq.), or pursuant to earlier railroad right-of-way statutes, and with respect to rights-of-way and easements issued pursuant to the Act of March 3, 1891 *(43 U.S.C. 946* et seq.). The oil and gas underlying any other right-of-way or easement is included within any oil and gas lease issued pursuant to the Act which covers the lands within the right-of-way, subject to the limitations on use of the surface, if any, set out in the statute under which, or permit by which, the right-of-way or easement was issued, and such oil and gas shall not be leased under the Act of May 21, 1930.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3109.1-2

§ 3109.1-2 Application.

No approved form is required for an application to lease oil and gas deposits underlying a right-of-way. The right-of-way owner or his/her transferee must file the application in the proper BLM office. Include the processing fee for leasing under right-of-way found in the fee schedule in § 3000.12 of this chapter. If the transferee files an application, it must also include an executed transfer of the right to obtain a lease. The application shall detail the facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee; the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by metes and bounds of the right-of-way is not required but each legal subdivision through which a portion of the right-of-way desired to be leased extends shall be described.

HISTORY: *[53 FR 17357,* May 16, 1988; *53 FR 22840,* June 17, 1988; *70 FR 58854, 58874,* Oct. 7, 2005]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: [EFFECTIVE DATE NOTE: *70 FR 58854, 58874,* Oct. 7, 2005, amended this section, effective Nov. 7, 2005.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of

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43 CFR 3109.1-3

§ 3109.1-3 Notice.

After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on its own motion, the authorized officer shall serve notice on the owner or lessee of the oil and gas rights of the adjoining lands. The adjoining land owner or lessee shall be allowed a reasonable time, as provided in the notice, within which to submit a bid for the amount or percent of compensatory royalty, the owner or lessee shall pay for the extraction of the oil and gas underlying the right-of-way through wells on such adjoining lands. The owner of the right-of-way shall be given the same time period to submit a bid for the lease.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3109.1-4

§ 3109.1-4 Award of lease or compensatory royalty agreement.

Award of lease to the owner of the right-of-way, or a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands shall be made to the bidder whose offer is determined by the authorized officer to be to the best advantage of the United States, considering the amount of royalty to be received and the better development under the respective means of production and operation.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3109.1-5

§ 3109.1-5 Compensatory royalty agreement or lease.

(a) The lease or compensatory royalty agreement shall be on a form approved by the Director.

(b) The royalty to be charged shall be fixed by the Bureau of Land Mangement in accordance with the provisions of § 3103.3 of this title, but shall not be less than 12 1/2 percent.

(c) The term of the lease shall be for a period of not more than 20 years.

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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43 CFR 3109.2

§ 3109.2 Units of the National Park System.

(a) Oil and gas leasing in units of the National Park System shall be governed by 43 CFR Group 3100 and all operations conducted on a lease or permit in such units shall be governed by 43 CFR parts 3160 and 3180.

(b) Any lease or permit respecting minerals in units of the National Park System shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall only be granted upon a determination by the Regional Director that the activity permitted under the lease or permit will not have significant adverse effect upon the resources or administration of the unit pursuant to the authorizing legislation of the unit. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the unit, to preserve their use for public recreation, and to the condition that site specific approval of any activity on the lease will only be given upon concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands shall also be submitted to the Bureau of Reclamation for review.

(c) The units subject to the regulations in this part are those units of land and water which are shown on the following maps on file and available for public inspection in the office of the Director of the National Park Service and in the Superintendent's Office of each unit. The boundaries of these units may be revised by the Secretary as authorized in the Acts.

(1) Lake Mead National Recreation Area--The map identified as "boundary map, 8360-80013B, revised February 1986.

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area--The map identified as "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," numbered BOR-WST 1004, dated July 1963.

(3) Ross Lake and Lake Chelan National Recreation Areas--The map identified as "Proposed Management Units, North Cascades, Washington," numbered NP-CAS-7002, dated October 1967.

(4) Glen Canyon National Recreation Area--the map identified as "boundary map, Glen Canyon National Recreation Area," numbered GLC-91,006, dated August 1972.

(d) The following excepted units shall not be open to mineral leasing:

(1) Lake Mead National Recreation Area. (i) All waters of Lakes Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum surface elevation;

(ii) All lands within the unit of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands outside of resource utilization zones as designated by the Superintendent on the map (602-2291B, dated October 1987) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent.

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area. (i) All waters of Whiskeytown Lake and all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation;

(ii) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611-20,004B, dated April 1979, entitled "Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area." This map is available for public inspection in the Office of the Superintendent;

(iii) All lands within section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian.

(3) Ross Lake and Lake Chelan National Recreation Areas. (i) All of Lake Chelan National Recreation Area;

(ii) All lands within 1/2 mile of Gorge, Diablo and Ross Lakes measured from the shoreline at maximum surface elevation;

(iii) All lands proposed for or designated as wilderness;

(iv) All lands within 1/2 mile of State Highway 20;

(v) Pyramid Lake Research Natural Area and all lands within 1/2 mile of its boundaries.

(4) Glen Canyon National Recreation Area. Those units closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,022A, dated March 1980, entitled "Mineral Management Plan--Glen Canyon National Recreation Area." This map is available for public inspection in the Office of the Superintendent and the office of the State Directors, Bureau of Land Management, Arizona and Utah.

HISTORY: *[48 FR 33662,* July 22, 1983, as amended at *53 FR 17358,* May 16, 1988; *53 FR 22840,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

RESEARCH GUIDE Applicable to entire Part:Part Note



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Title 3 is current through July 7, 2017.

TITLE 43 -- PUBLIC LANDS: INTERIOR
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC LANDS
CHAPTER II -- BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR
SUBCHAPTER C -- MINERALS MANAGEMENT (3000)
PART 3100 -- OIL AND GAS LEASING
SUBPART 3109 -- LEASING UNDER SPECIAL ACTS
§ 3109.1 RIGHTS-OF-WAY.

Go to the CFR Archive Directory

43 CFR 3109.2-1

§ 3109.2-1 Authority to lease. [Reserved]

[NO TEXT IN ORIGINAL]

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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SUBPART 3109 -- LEASING UNDER SPECIAL ACTS
§ 3109.1 RIGHTS-OF-WAY.

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43 CFR 3109.2-2

§ 3109.2-2 Area subject to lease. [Reserved]

[NO TEXT IN ORIGINAL]

HISTORY: *48 FR 33662,* July 22, 1983.

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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PART 3100 -- OIL AND GAS LEASING
SUBPART 3109 -- LEASING UNDER SPECIAL ACTS
§ 3109.1 RIGHTS-OF-WAY.

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43 CFR 3109.3

§ 3109.3 Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

Section 6 of the Act of November 8, 1965 (Pub. L. 89-336), authorizes the Secretary to permit the removal of oil and gas from lands within the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area in accordance with the act or the Mineral Leasing Act for Acquired Lands. Subject to the determination by the Secretary of Agriculture that removal will not have significant adverse effects on the purposes of the Central Valley project or the administration of the recreation area.

HISTORY: *[48 FR 33662,* July 22, 1983. Redesignated at *53 FR 22840,* June 17, 1988]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
25 U.S.C. 396d and 2107; *30 U.S.C. 189,* 306, 359 and 1751; *43 U.S.C. 1732*(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109-58).

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[PUBLISHER'S NOTE: The Appendix to 43 CFR Chapter II, which constitutes a Table of Public Land Orders (PLOs) from 1942-1995, was removed at *61 FR 2137,* Jan. 25, 1996, effective Feb. 26, 1996. The 1996 edition of title 43 of the CFR is the last to include the Appendix. Consult the annual Federal Register index to locate PLOs issued in subsequent years.]

RESEARCH GUIDE Applicable to entire Part:Part Note

The Olde Farm

16639 OLD JONESBORO ROAD
BRISTOL, VIRGINIA 24202

PHONE: (276) 669-1042
FAX : (276) 669-8626
LEADERSHIPFORUM@THEOLDEFARM.COM

BASIC INFORMATION

RESERVATIONS & MORE INFO
ONLINE: www.theoldefarm.com/leadership-forum-registration
Phone: (276) 669-1042 // Fax: (276) 669-8626
EMAIL: leadershipforum@theoldefarm.com

CONFERENCE FEE→ LODGING IS NOT INCLUDED
$6,000: Includes: golf, food & beverages, shuttle services, gratuities, prizes, awards, club rental & fishing

ELIGIBILITY
Invitation Only: First come, first served basis.

LODGING
The Olde Farm Cottages & The Lodge
(on property)

SHUTTLE SERVICE→ PLEASE SCHEDULE IN ADVANCE
Complimentary shuttle service will be provided to and from:
VA Highlands Airport, Tri-City Aviation, and Tri-Cities Regional Airport

LOCAL AIRPORTS

PRIVATE AIRPORTS
Tri-City Aviation
Runway Length: 8,000 ft x 150 ft
(423) 325-6261
253 Airport Circle
Blountville, TN 37617

Virginia Highlands Airport
Runway Length: 4,470 ft x 75 ft
(276) 628-2909
18521 Lee Highway
Abingdon, VA 24210

COMMERCIAL AIRPORT
Tri-Cities Regional Airport (TRI)
Service by Delta, US Airways & Allegiant
(423) 325-6000
2525 Highway 75
Blountville, TN 37617

The Olde Farm

SEVENTH ANNUAL

COAL & INVESTMENT LEADERSHIP FORUM

JUNE 3-5, 2018



EVENT HOSTS
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A PRIVATE, INVITATION-ONLY CONFERENCE FOCUSING ON CHALLENGES AND OPPORTUNITIES FACING COAL AND ENERGY AROUND THE GLOBE TODAY.

HOSTS



JIMMY BROCK

CEO and a director of CNX Coal Resources LP, and also currently serves as Vice Chairman of the West Virginia Coal Association Board of Directors as well as Chairman of the Board for Pennsylvania Coal Alliance.



CHRIS CLINE

A mining entrepreneur and philanthropist. Majority owner of privately held Foresight Reserves LP, headquartered in St. Louis, Missouri. Regarded by Bloomberg as the New King Coal, he is considered responsible for reviving the Illinois coal industry. His company has more than three billion tons of coal reserves across Illinois and the Northern Appalachia.



JOE CRAFT III

Chairman of Alliance GP LLC, CEO of Alliance GP LLC, President of Alliance GP LLC and Member of Compensation Committee, Alliance Holdings GP, L.P.



KEVIN CRUTCHFIELD

CEO of Contura Energy and a member of the Board of Directors of Coeur d'Alene Mines Corporation.



JOHN EAVES

CEO of Arch Coal Inc. since April 2012 and its President since April 28, 2006.



JIM MCGLOTHLIN

Chairman and CEO of The United Company, a diversified holding company with investments in Coal, Oil & Gas, and Financial Services.



BOB MURRAY

CEO of Murray Energy Corporation, a mining corporation based in St. Clairsville, Ohio. He is one of the largest independent operators of coal mines in the United States.



MIKE TRACY

President & CEO of Drummond Company, Inc. since July 2016. He was also re-elected to the Board of Directors, and is responsible for all of Drummond Company, Inc. and its affiliates.

SPEAKERS



THE HONORABLE BOB CORKER

United States Senator from Tennessee

In 2012, Tennesseans overwhelmingly elected Senator Bob Corker to his second term in the U.S. Senate, where he serves as chairman of the Foreign Relations Committee and is an active member of the Banking Committee and the Budget Committee. Senator Corker was Tennessee's commissioner of finance and mayor of Chattanooga before being elected to the Senate in 2006, but he spent most of his life in business. At the age of 25, Senator Corker started his own construction company, eventually expanding operations to 18 states across the country.



THE HONORABLE RYAN ZINKE

52nd United States Secretary of the Interior

As Secretary of the Interior, Ryan Zinke leads an agency with more than 70,000 employees who are stewards for 20 percent of the nation's lands, including national parks, monuments, wildlife refuges and other public lands. The department oversees the responsible development of conventional and renewable energy supplies on public lands and waters; is the largest supplier and manager of water in the 17 Western states; and upholds trust responsibilities to the 567 federally recognized American Indian tribes and Alaska Natives.



BRET BAIER

FOX News Channel's (FNC) chief political anchor and anchor of "Special Report with Bret Baier"

Bret Baier currently serves as FOX News Channel's (FNC) chief political anchor and anchor of "Special Report with Bret Baier" (weeknights 6-7PM/ET), the top-rated cable news program in its timeslot and consistently one of the top four shows in cable news. Based in Washington, D.C., Baier joined the network in 1998 as the first reporter in the Atlanta bureau.



CHRISTOPHER HORNER

Board Member and Counsel, Government Accountability & Oversight, Senior Fellow for CEI

A Senior Fellow with the Washington DC think tank Competitive Enterprise Institute. An attorney in Washington, DC, Horner provides regulatory counsel, and has also represented think tanks, scientists and members of the U.S. House and Senate on matters of environmental policy in the federal courts (including e.g., scientists in Mass. v. EPA, members of Congress in EDF v. Duke Energy, both SCOTUS '07).



LANNY WADKINS

PGA Golf Professional

With a quick pace of play, Wadkins won 21 PGA TOUR events including the 1977 PGA Championship. In the years that the U.S. Amateur was played at all stroke play (1965 - 1972), Wadkins set the all-time record of 279 with his win by one over Tom Kite at Waverley Country Club in Portland. He joined the PGA TOUR in 1972 winning the Sahara Invitational in Las Vegas and was later voted the 1972 PGA TOUR Rookie of the Year. But he is perhaps best known as being one of America's finest ever Ryder Cup players. He played on eight Ryder Cup teams, a record he shares with Billy Casper and Raymond Floyd.

SCHEDULE OF EVENTS

SUNDAY, JUNE 3RD

11:00 AM	CHECK-IN BEGINS
12:00 PM	LUNCH IN THE CLUBHOUSE (GOLF ATTIRE)
1:00 PM	GOLF (OPTIONAL)
6:00 PM	COCKTAIL HOUR AT THE PAVILION (BUSINESS CASUAL)
7:00 PM	OPENING DINNER AT THE PAVILION
8:00 PM	**GUEST SPEAKER PRESENTATION**

MONDAY, JUNE 4TH

7:00 AM	BREAKFAST AT THE PARTY BARN (GOLF ATTIRE)
8:30 AM	**GUEST SPEAKER PRESENTATION**
9:45 AM	**GUEST SPEAKER PRESENTATION**
12:00 PM	LUNCH IN THE CLUBHOUSE (GOLF ATTIRE)
1-5 PM	FLY FISHING TRAINING & RIVER FLOAT FISHING
1:30 PM	GOLF
6:30 PM	COCKTAILS AT THE PARTY BARN (BUSINESS CASUAL)
7:30 PM	DINNER AT THE PARTY BARN
8:00 PM	**GUEST SPEAKER PRESENTATION**

TUESDAY, JUNE 5TH

7:00 AM	BREAKFAST AT THE PARTY BARN (GOLF ATTIRE)
8:30 AM	**GUEST SPEAKER PRESENTATION**
9:30 AM	INFORMAL DISCUSSIONS
11:30 AM	LUNCH IN THE CLUBHOUSE (GOLF ATTIRE)
1:00 PM	GOLF (OPTIONAL)



McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

[EXTERNAL] RE: "Ticket" to Annual Gala

1 message

Alicia Brooks <abrooks@fords.org> Thu, Jun 7, 2018 at 4:51 PM
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

Hi Ed,

Yes, that is correct.

Thank you!

Alicia

From: McDonnell, Edward <edward.mcdonnell@sol.doi.gov>
Sent: Thursday, June 07, 2018 1:19 PM
To: Alicia Brooks <abrooks@fords.org>
Subject: "Ticket" to Annual Gala

Hi Alicia,

I spoke with you this morning regarding the market value of attendance at the 2018 Ford Theatre Society (Society) Gala and I wondered if I could verify one thing.

I understand that anyone who wishes to attend even one of the four Gala events must pay an "admission fee" of $7,500--$500 of which covers the Society's expenses and $7,000 of which constitutes a tax-deductible charitable donation to the Society. Further, I understand that everyone who pays the "admission fee" of $7,500 receives a very nicely designed "ticket" to the event but that this "ticket" does not have a face value, meaning that nowhere on the "ticket" is any monetary value displayed. Is it correct to conclude, therefore, that no one who attends the Gala receives a ticket that actually has a face value displayed on it?

Thank you very much,

Ed

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6)

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: [EXTERNAL] RE: Follow up to our conversation today

1 message

Connors, Margaret <margaret.connors@sol.doi.gov> Tue, May 29, 2018 at 2:52 PM
To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>

---------- Forwarded message ----------
From: **Alicia Brooks** <abrooks@fords.org>
Date: Tue, May 29, 2018 at 11:24 AM
Subject: RE: [EXTERNAL] RE: Follow up to our conversation today
To: "Connors, Margaret" <margaret.connors@sol.doi.gov>

Hi Markee,

No, there will not be however Ford's Theatre Society, a 501(c)3 non-profit organization. Please let me know if I can be of additional assistance.

Best,

Alicia

From: Connors, Margaret <margaret.connors@sol.doi.gov>
Sent: Tuesday, May 29, 2018 11:03 AM
To: Alicia Brooks <abrooks@fords.org>
Subject: Re: [EXTERNAL] RE: Follow up to our conversation today

Also, can you tell me if there are going to be any NGOs at this event?

Markee

On Tue, May 29, 2018 at 10:55 AM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:

> Thanks Alicia. To follow up on our conversation, do you know if there is a reduced price for the ticket it say, someone only wanted to attend one event rather that the four events over the weekend of June 9-10?
>
> Markee
>
> On Wed, May 23, 2018 at 3:50 PM, Alicia Brooks <abrooks@fords.org> wrote:
>
> > Good afternoon Markee,

Great talking with you today. Yes, the information below is correct. Please let me know if I can be of additional assistance.

Best,

Alicia

From: Connors, Margaret <margaret.connors@sol.doi.gov>
Sent: Wednesday, May 23, 2018 2:50 PM
To: Alicia Brooks <abrooks@fords.org>
Subject: Fwd: Follow up to our conversation today

---------- Forwarded message ----------
From: **Connors, Margaret** <margaret.connors@sol.doi.gov>
Date: Wed, May 23, 2018 at 2:44 PM
Subject: Follow up to our conversation today
To: abrooks@ford.org

Alicia:

My name is Markee Connors and I spoke to you this morning about the Ford's Theatre Gala Event being help on June 9-10, 2018. I wanted to confirm with you that the ticket are actually $7500.00 per person which is a $7000.00 donation to Ford's Theatre, and $500.00 cost for the food and beverages at all the events over the weekend of June 9-10, 2018. Also, per our discussion, you indicated that although General Dynamics, Ovation, and Story Partners are sponsors for the event, and that these entities were not involved in the developing the event's agenda, guest list or speakers etc.

Markee Connors

202-513-0325

margaret.connors@sol.doi.gov

--

Margaret "Markee" S. Connors

Department Ethics Office

U.S. Department of the Interior

1849 C Street, NW

Room 5311

Washington, DC 20240

Phone: 202-513-0325

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ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of June 6, 2018

Title 5 → Chapter XVI → Subchapter B → Part 2635 → Subpart B → §2635.203

Title 5: Administrative Personnel
PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH
Subpart B— Gifts From Outside Sources

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§2635.203 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Agency* has the meaning set forth in §2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term excludes the following:

(1) Modest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation;

Example 1 to paragraph (b)(2): After giving a speech at the facility of a pharmaceutical company, a Government employee is presented with a glass paperweight in the shape of a pill capsule with the name of the company's latest drug and the date of the speech imprinted on the side. The employee may accept the paperweight because it is an item with little intrinsic value which is intended primarily for presentation.

Example 2 to paragraph (b)(2): After participating in a panel discussion hosted by an international media company, a Government employee is presented with an inexpensive portable music player emblazoned with the media company's logo. The portable music player has a market value of $25. The employee may not accept the portable music player as it has a significant independent use as a music player rather than being intended primarily for presentation.

Example 3 to paragraph (b)(2): After giving a speech at a conference held by a national association of miners, a Department of Commerce employee is presented with a block of granite that is engraved with the association's logo, a picture of the Appalachian Mountains, the date of the speech, and the employee's name. The employee may accept this item because it is similar to a plaque, is designed primarily for presentation, and has little intrinsic value.

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of the employee's official duties;

Example 1 to paragraph (b)(5): A Government employee is attending a free trade show on official time. The trade show is held in a public shopping area adjacent to the employee's office building. The employee voluntarily enters a drawing at an individual vendor's booth which is open to the public. She fills in an entry form on the vendor's display table and drops it into the contest box. The employee may accept the resulting prize because entry into the contest was not required by or related to her official duties.

Example 2 to paragraph (b)(5): Attendees at a conference, which is not open to the public, are entered in a drawing for a weekend getaway to Bermuda as a result of being registered for the conference. A Government employee who attends the conference in his official capacity could not accept the prize under paragraph (b)(5) of this section, as the event is not open to the public.

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a current or former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

Example 1 to paragraph (b)(7): An employee at the Occupational Safety and Health Administration is assigned to travel away from her duty station to conduct an investigation of a collapse at a construction site. The employee's agency is paying for her travel expenses, including her airfare. The employee may accept and retain travel promotional items, such as frequent flyer miles, received as a result of her official travel, to the extent permitted by 5 U.S.C. 5702, note, and 41 CFR part 301-53.

(8) Free attendance to an event provided by the sponsor of the event to:

(i) An employee who is assigned to present information on behalf of the agency at the event on any day when the employee is presenting;

(ii) An employee whose presence on any day of the event is deemed to be essential by the agency to the presenting employee's participation in the event, provided that the employee is accompanying the presenting employee; and

(iii) The spouse or one other guest of the presenting employee on any day when the employee is presenting, provided that others in attendance will generally be accompanied by a spouse or other guest, the offer of free attendance for the spouse or other guest is unsolicited, and the agency designee, orally or in writing, has authorized the presenting employee to accept;

Example 1 to paragraph (b)(8): An employee of the Department of the Treasury who is assigned to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of §2635.204(a), the employee may accept a token of appreciation that has a market value of $20 or less.

Example 2 to paragraph (b)(8): An employee of the Securities and Exchange Commission is assigned to present the agency's views at a roundtable discussion of an ongoing working group. The employee may accept free attendance to the meeting under paragraph (b)(8) of this section because the employee has been assigned to present information at the meeting on behalf of the agency. If it is determined by the agency that it is essential that another employee accompany the presenting employee to the roundtable discussion, the accompanying employee may also accept free attendance to the meeting under paragraph (b)(8)(ii) of this section.

Example 3 to paragraph (b)(8): An employee of the United States Trade and Development Agency is invited to attend a cocktail party hosted by a prohibited source. The employee believes that he will have an opportunity to discuss official matters with other attendees while at the event. Although the employee may voluntarily discuss official matters with other attendees, the employee has not been assigned to present information on behalf of the agency. The employee may not accept free attendance to the event under paragraph (b)(8) of this section.

(9) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to the employee's official duties which take place away from the employee's duty station, provided that the agency's acceptance is in accordance with the implementing regulations at 41 CFR chapter 304; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; and

(10) Anything for which market value is paid by the employee.

(c) *Market value* means the cost that a member of the general public would reasonably expect to incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is deemed to be the face value of the ticket.

Example 1 to paragraph (c): An employee who has been given a watch inscribed with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable watch, not inscribed with a logo, generally sells for about $50.

Example 2 to paragraph (c): During an official visit to a factory operated by a well-known athletic footwear manufacturer, an employee of the Department of Labor is offered a commemorative pair of athletic shoes manufactured at the factory. Although the cost incurred by the donor to manufacture the shoes was $17, the market value of the shoes would be the $100 that the employee would have to pay for the shoes on the open market.

Example 3 to paragraph (c): A prohibited source has offered a Government employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only $20, the market value of the ticket is its $250 face value.

Example 4 to paragraph (c): A company offers an employee of the Federal Communication Commission (FCC) free attendance for two to a private skybox at a ballpark to watch a major league baseball game. The skybox is leased annually by the company, which has business pending before the FCC. The skybox tickets provided to the employee do not have a face value. To determine the market value of the tickets, the employee must add the face value of two of the most expensive publicly available tickets to the game and the market value of any food, parking or other tangible benefits provided in connection with the gift of attendance that are not already included in the cost of the most expensive publicly available tickets.

Example 5 to paragraph (c): An employee of the Department of Agriculture is invited to a reception held by a prohibited source. There is no entrance fee to the reception event or to the venue. To determine the market value of the gift, the employee must add the market value of any entertainment, food, beverages, or other tangible benefit provided to attendees in connection with the reception, but need not consider the cost incurred by the sponsor to rent or maintain the venue where the event is held. The employee may rely on a per-person cost estimate provided by the sponsor of the event, unless the employee or an agency designee has determined that a reasonable person would find that the estimate is clearly implausible.

(d) *Prohibited source* means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

(e) *Given because of the employee's official position.* A gift is given because of the employee's official position if the gift is from a person other than an employee and would not have been given had the employee not held the status, authority, or duties associated with the employee's Federal position.

NOTE TO PARAGRAPH (E): Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1 to paragraph (e): Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

Example 2 to paragraph (e): Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority, or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

(f) *Indirectly solicited or accepted.* A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to the employee's parent, sibling, spouse, child, dependent relative, or a member of the employee's household because of that person's relationship to the employee; or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except the employee has not indirectly solicited or accepted a gift by the raising of funds or other support for a charitable organization if done in accordance with §2635.808.

Example 1 to paragraph (f)(2): An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) *Free attendance* includes waiver of all or part of the fee for an event or the provision of food, refreshments, entertainment, instruction or materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, or entertainment collateral to the event. It does not include meals taken other than in a group setting with all other attendees, unless the employee is a presenter at the event and is invited to a separate meal for participating presenters that is hosted by the sponsor of the event. Where the offer of free attendance has been extended to an accompanying spouse or other guest, the market value of the gift of free attendance includes the market value of free attendance by both the employee and the spouse or other guest.

Need assistance?

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: [EXTERNAL] Ford's Theatre Annual Gala - June 9-10, 2018

1 message

Rees, Gareth <gareth_rees@ios.doi.gov> Wed, May 23, 2018 at 8:54 AM
To: Margaret Connors <margaret.connors@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Good Morning

David would like to attend this event on behalf of the Secretary. I know there are sometimes complications with things from Fords Theatre so wanted to get to you asap.

Thanks
G

---------- Forwarded message ----------
From: **SIO, Scheduling** <scheduling_sio@ios.doi.gov>
Date: Tue, May 22, 2018 at 12:20 PM
Subject: Fwd: [EXTERNAL] Ford's Theatre Annual Gala - June 9-10, 2018
To: Gareth Rees <gareth_rees@ios.doi.gov>, Matthew Dermody <matthew_dermody@ios.doi.gov>

Hi Gareth and Matt,

The Secretary is unavailable, so they would like to try to get the Deputy Secretary if possible.

Thanks
Nick

Leila Sepehri Getto
U.S. Department of the Interior
Immediate Office of the Secretary
Deputy Director, Scheduling and Advance
Direct: (202) 208-5359
Cell: (b) (6) [redacted]

---------- Forwarded message ----------
From: **Alicia Brooks** <abrooks@fords.org>
Date: Mon, May 14, 2018 at 11:18 AM
Subject: [EXTERNAL] Ford's Theatre Annual Gala - June 9-10, 2018
To: "SIO, Scheduling" <scheduling_sio@ios.doi.gov>

Good afternoon,

I'm reaching out regarding the invitation for Secretary and Mrs. Zinke to attend the *Ford's Theatre Annual Gala* on June 9-10, 2018. A formal invitation was sent via FedEx; a pdf of the invitation and a full schedule of events is also attached for your reference. We are honored to have Mrs. Melania Trump serving as the Honorary Chair of the gala this year.

One of the highlights of the gala performance is the awarding of the Ford's Theatre Lincoln Medal. We are thrilled to be honoring entrepreneur and philanthropist Sheila Johnson and "Golfer of the Century" Jack Nicklaus this year.

We would be delighted to have them join us. If possible, please RSVP by May 24th. Please contact me with any questions or should you need additional information.

Best,

Alicia

Alicia Brooks

Senior Manager, Special Events and Government Relations

Ford's Theatre | Where Lincoln's Legacy Lives

Mailing Address: 514 10th St. NW, Washington, DC 20004

Phone: (202) 434-9526 | Fax: (202) 783-5718

Email: abrooks@fords.org

www.fords.org

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6) [redacted]

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2 attachments

2018 Ford's Annual Gala Invitation.pdf
436K

2018 Ford's Annual Gala Schedule of Events - with venues.pdf
121K

Honorary Chair

Mrs. Melania Trump

Honorary Co-Chairs

Mrs. Rima Al-Sabah
Mrs. Abigail P. Blunt
Hon. Muriel Bowser
Mrs. Candy Carson
Mrs. Sandy Cornyn
Mrs. Kasey A. Crowley
Ms. Gloria Story Dittus
Mrs. Marlene Malek
Mrs. Gayle C. Manchin
Mrs. Judy McCarthy
Mr. Paul Pelosi
Mrs. Hilary Geary Ross
Mrs. Janna Ryan
Mrs. Doreen M. Spiegel
Ms. Iris Weinshall

and the Ford's Theatre Society

Board of Trustees

cordially invite you to attend

Ford's Theatre
ANNUAL GALA

June 9-10, 2018

2018 Gala
Schedule of Events

Saturday, June 9 (Business Attire)

8:00 p.m. **Reception Celebrating Ford's Theatre and Lincoln's Legacy**
(Formal invitation and additional details will be sent under separate cover.)

Sunday, June 10 (Black Tie)

4:00 p.m. **Special Pre-Gala Reception**
(Formal invitation and additional details will be sent under separate cover.)

7:00 p.m. **Gala Performance at Ford's Theatre**

8:30 p.m. **Post-Performance Seated Dinner at the National Portrait Gallery and Smithsonian American Art Museum**

Ford's Theatre
ANNUAL GALA

In a landscape rich with arts and culture organizations, Ford's Theatre is unique. Not only is Ford's an official national historic site dedicated to preserving President Abraham Lincoln's memory, but it is a living tribute to the indelible mark our 16th President left on the country. By honoring his legacy through a world-class museum, celebrating his love of theatre through award-winning productions, and instilling his principles in future generations through educational programs for students and teachers, Ford's Theatre brings President Lincoln's ideals to life.

At the heart of Lincoln's efforts was a desire to bring people together and unite the nation. Today, Ford's Theatre ennobles that sentiment through its renowned *Annual Gala*, an opportunity for government officials, philanthropists and legendary figures in American culture to come together through the performing arts in support of this timeless institution.

Funds raised from the gala weekend support the artistic and educational efforts of Ford's Theatre, enabling nearly 700,000 visitors each year to find inspiration and encouragement in the achievements of one of our nation's most beloved presidents.

We look forward to welcoming you to an unforgettable celebration.

Ford's Theatre
ANNUAL GALA

SCHEDULE OF EVENTS

SATURDAY, JUNE 9, 2018 (Business Attire)

8:00 p.m. Reception Celebrating Ford's Theatre and Lincoln's Legacy Honorarily Hosted by Members of the 115th Congress

Place: Statuary Hall, The United States Capitol

(Your formal invitation will be sent under separate cover.)

SUNDAY, JUNE 10, 2018 (Black Tie)

4:00 p.m. Special Pre-Gala Reception

Place: The White House

(Your formal invitation will be sent under separate cover.)

7:00 p.m. Gala Performance

Place: Ford's Theatre
511 Tenth Street, NW
Washington, DC

8:30 p.m. Post-Performance Seated Dinner

Place: National Portrait Gallery
and Smithsonian American Art Museum
Eighth and F Streets, NW
Washington, DC

San Luis & Delta-Mendota Water Authority

P.O. Box 2157
Los Banos, CA 93635
Phone: (209) 826-9696
Fax: (209) 826-9698

State Water Contractors

1121 L St., Suite 1050
Sacramento, CA 95814
Phone: (916) 447-7357
Fax: (916) 447-2734

RECEIVED
FEB / 2 2012
3885-Delta Council

February 2, 2012

Delta Stewardship Council
Attn: EIR Comments
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: *Delta Plan Draft Program Environmental Impact Report*

Council Members:

The San Luis & Delta-Mendota Water Authority and State Water Contractors (collectively, the "Public Water Agencies")[1] write on their own behalf and on behalf of their member agencies to express significant concerns with the Delta Plan Draft Program Environmental Impact Report (Delta Plan Draft Program EIR) the Delta Stewardship Council (DSC or Council) prepared for its Delta Plan. These concerns reflect deficiencies under the California Environmental Quality Act (CEQA). Specifically, the EIR lacks actual identification and analyses of environmental impacts that would result from implementation of the proposed project – the policies and recommendations included in the Fifth Staff Draft Delta Plan, published on August 2, 2011 and including in Appendix C to the Delta Plan Draft Program EIR.[2]

The Public Water Agencies.

The Public Water Agencies represent 56 agencies, 54 of which receive water from the federal Central Valley Project (CVP) and/or State Water Project (SWP). Collectively, the Public Water Agencies deliver water to more than 25,000,000 people in California and almost

[1] The Public Water Agencies are described and their members are identified in **Attachment 1** to this letter.

[2] Under California Code of Regulations, title 14, section 15148, the Delta Plan Draft Program EIR must cite all documents used in its preparation, and, under Public Resources Code section 20192 and California Code of Regulations, title 14, section 15150, the DSC must make available to the public all documents referenced in or incorporated by reference into the draft environmental impact report. The Delta Plan Draft Program EIR and DSC fail to meet these legal requirements. Other then including a list of referenced environmental impact reports, the Delta Plan Draft Program EIR does not identify the documents relied upon to support the analyses contained therein. And, the DSC has not made cited or referenced documents available to the public. The Public Water Agencies submit concurrent with this letter a number of documents, many of which are referenced herein and are hereby incorporated herein by this reference, that the DSC must consider as it revises the Delta Plan Draft Program EIR. The Public Water Agencies request that a copy of each document be included in the administrative record for the proposed project and the Delta Plan Program EIR.

2,000,000 acres of prime farmland. Almost every Public Water Agency relies upon water that falls within the Sacramento River watershed and that is conveyed through the Sacramento-San Joaquin River Delta. And, several of the Public Water Agencies, along with the California Department of Water Resources, are the proponents of the Bay Delta Conservation Plan (BDCP), which is intended to accelerate ecosystem restoration in the Delta while also restoring and improving CVP and SWP water supplies lost to the Public Water Agencies as a consequence of regulatory constraints imposed in recent decades – goals that mirror, even though determined years prior to, the Legislature's establishment of the coequal goals as state policy in the Delta Reform Act. Ultimately, the expected outcome of the development and implementation of the BDCP is to support take permits for species protected under the federal and state Endangered Species Acts as an incident to authority for operation of the CVP and SWP in-Delta facilities. Pursuant to the Delta Reform Act, the BDCP shall be incorporated into the Delta Plan if specific criteria are satisfied. Consequently, the Public Water Agencies have a vital, unique, and vested interest in the proposed project and the Delta Plan Draft Program EIR.

Summary of the Public Water Agencies' Overarching Concerns with the Delta Plan Draft Program EIR.

The Delta Plan Draft Program EIR is legally deficient for at least four principle reasons:

- **The Delta Plan Draft Program EIR frustrates the CEQA core policy of informed public involvement and decision-making;**
- **The Delta Plan Draft Program fails to present a sufficient environmental analysis of the proposed plan and its alternatives;**
- **The Delta Plan Draft Program EIR supports a proposed project that would impede, rather than further, the achievement of the coequal goals; and**
- **The Delta Plan Draft Program EIR supports a proposed project that would be inconsistent with the effective implementation of the BDCP.**

First, the Delta Plan Draft Program EIR does not foster, and in fact hinders, informed public comment and decision-making. It is very difficult, if not impossible, to determine if the proposed project will satisfy the Project objectives or whether significant impacts of the proposed project will be substantially lessened or avoided by any of the alternatives. Those results are expected given the DSC staff October 27, 2011 presentation to the Council on the status and summary of approach for the Delta Plan Draft Program EIR. At that time, the DSC staff explained that the:

EIR does not evaluate whether the Project or Alternatives will meet the coequal

> goals....[and that the] Ability of Project and Alternatives to meet the coequal goals is something staff will evaluate later and Council ultimately will decide.

(DSC Staff October 27, 2011, Presentation.)[3] This directly contravenes the intent of CEQA to ensure informed decision making when selecting the best alternative to *achieve* the *project objectives*; here, at least the furtherance of the coequal goals.

Second and third, the Delta Plan Draft Program EIR fails to adequately evaluate the proposed project and the alternatives. The proposed project encourages substantial reductions in the water supplies developed in the watersheds of the Sacramento and San Joaquin rivers that are beneficially used for environmental, municipal, industrial and agricultural purposes. The Delta Plan Draft Program EIR assumes those reductions will be offset by "programs and projects that will improve self-reliance." (Delta Plan Draft Program EIR, p. 2A-6, lines 10 through 12.) The impacts of that paradigm are not adequately presented in the Delta Plan Draft Program EIR and the paradigm is difficult to reconcile with the legal mandate that the Delta Plan "include measures to promote a more reliable water supply that [meets] the needs for reasonable and beneficial uses of water." (Water Code, § 85302(d)(1).) Most simply put, water supplies conveyed through the Delta were developed because local and regional water supplies were insufficient to meet then existing or projected uses. There is no basis to assume sufficient programs or projects can be implemented, particularly within the time periods suggested, to offset reductions in the quantity of water conveyed through the Delta or to meet the needs of present, let alone future, reasonable and beneficial uses of water; water necessary to "sustain the economic vitality of the state." (Water Code, § 85302(d)(2).)

Fourth, the proposed project's approach to the "water supply" element of the coequal goals, its approach to alternatives, and its impacts analyses are inconsistent with the BDCP. In the Delta Reform Act, the Legislature respected the on-going BDCP process, providing that the BDCP shall be included in the Delta Plan if the BDCP meets certain specified criteria (Water Code, § 85320 (e).) Thus the Delta Plan must be consistent with the BDCP, particularly with respect to water supply and ecosystem objectives. As established by its Planning Agreement, the water supply goal for the BDCP is to "[a]llow for projects [within the Delta] to proceed that restore and protect water supply...." (BDCP Planning Agreement, § 3.)[4] The BDCP's Notice of Preparation and the Notice of Intent expressed this goal in more detail:

> Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water,

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[3] Available at http://deltacouncil.ca.gov/delta-plan-draft-eir. (*See* "The Draft EIR Status and Summary of Approach Power Point".)

[4] On October 5, 2009, the California Bay-Delta Authority, by its Director Joe Grindstaff, signed the First Amendment to the Planning Agreement. The First Amendment extended the duration of the agreement and affirmed that "[a]ll other terms and conditions of the Planning Agreement shall remain in full force and effect during the Extension Period." Through Water Code section 85034, the DSC assumed from the California Bay-Delta Authority "all of the administrative rights, abilities, obligations, and duties of that authority."

consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.

(NOP for BDCP Joint EIS/EIR (Purpose and Project Objectives)/NOI for BDCP Joint EIS/EIR (Purpose and Need for Action).)

The project objectives for the Delta Plan as stated in the Delta Plan Draft Program EIR are inconsistent with the legislatively mandated objectives and the need for consistency with the BDCP.[5] As a result, neither the proposed project nor its alternatives will achieve the purposes of the BDCP. The proposed project also includes proposed policies that are directly counter to the goals of the BDCP – a pre-existing program the Legislature has determined should be a central component of the Delta Plan, subject to procedural requirements in the Delta Reform Act.

Summary of the Public Water Agencies' Specific Concerns with the Delta Plan Draft Program EIR.

The California Legislature presented the DSC with a challenge – to develop and implement a plan to guide state agencies and better coordinate their activities to further the achievement of what are commonly seen as competing goals. The Legislature authorized and directed the DSC to develop a Delta Plan that furthers the restoration of the Delta ecosystem and promotes a more reliable water supply – a water supply that meets the needs for reasonable and beneficial uses of water. (Water Code, § 85302(d).) The Legislature intended the Delta Plan further those coequal goals in a manner that protects and enhances the unique cultural, recreational, natural recourses and agricultural values of the Delta, as an evolving place. Unfortunately, the Delta Plan Draft Program EIR does not provide sufficient information to allow the public or the DSC to assess whether the proposed project or its alternatives will accomplish that Legislative directive.[6] The Delta Plan Draft Program EIR is lacking in every critical substantive area. The following are some key deficiencies, which we elaborate on further throughout this letter:

Defective Project Objectives: The Project objectives in the Delta Plan Draft Program EIR are not consistent with the Legislative mandate that the Delta Plan further the restoration of the Delta ecosystem and a reliable water supply – the coequal goals. The Project objectives ignore important Legislative findings and declarations – specifically the finding to provide a more reliable water supply for the state. (Water Code, § 85004.) The Project objectives thus create an

[5] One of the EIR's stated project objectives includes being "consistent with specific statutory content requirements for the Delta Plan (Water Code sections 85302(c) through (e), and 85303-85308)". This objective omits reference to the requirement under section 85320(e) that the Delta Plan must also include the BDCP, provided specific criteria are satisfied.

[6] The Public Water Agencies have submitted to the DSC comments on each draft of the Delta Plan (some individually and collectively through the State and Federal Contractors Water Agency), including the fifth draft, which forms the basis for the proposed project. Among other comments raised, the Public Water Agencies explained that elements of the draft Delta Plan, if included in the final Delta Plan, would be unlawful because they are not consistent with the legal authority the Legislature delegated to the DSC. Those comments are relevant to the Delta Plan Draft Program EIR, in part, because they raise defects in the proposed project and present alternatives that would substantially lesson the impacts of the proposed project.

imbalance between the Legislatively mandated coequal goals that effectively provide a priority for ecosystem improvements. That error leads to the formation of skewed CEQA alternatives that do not meet the legislatively mandated objectives. The result is the antithesis of CEQA, which is intended to ensure an objective and balanced overview of the environmental impacts of a proposed project and alternatives, prior to choosing a preferred project. As previously noted, the Delta Plan Draft Program EIR's Project objectives are also not consistent with the Legislative mandate that the DSC incorporate the Bay Delta Conservation Plan into the Delta Plan, provided the BDCP meets specific criteria.

Defective Project Description: The DSC is proceeding with the Delta Plan Draft Program EIR knowing the description of the proposed project is unstable and ultimately misleading. First, elements of the proposed project are not reasonably certain to occur and thus are not likely to satisfy the statutory Project objectives. DSC staff has and will continue to modify the proposed project over the course of the next three or more months. Second, the proposed project assumes actions and responses will occur without explaining what the underlying assumptions are. For example: (1) the proposed project assumes, without any support, the State Water Resources Control Board will require water right holders to divert substantially less water from the watersheds of the Sacramento and San Joaquin Rivers despite the State Water Board's process occurring independent of the Delta Plan; and, (2) the proposed project assumes, again without any support, that regional or local actions will not only off-set supplies assumed lost from the action by the State Water Board but will sufficiently augment supplies and meet all existing and future reasonable and beneficial uses.

Defective Alternatives: The description of alternatives is wholly lacking. The Delta Plan Draft Program EIR does not describe complete and proper alternatives to the proposed project. Instead, it presents alternatives by comparing elements of them to the proposed project. This approach to alternatives does not result in the Delta Plan Draft Program EIR evaluating a range of reasonable alternatives. Also, the Delta Plan Draft Program EIR ignores reasonable alternatives that reflect better policy and avoid potentially significant impacts of the proposed project. As a result, the approach leads a reader to believe that the DSC has already determined that the proposed project should be adopted as its "preferred project."

Defective Impact Analyses: The impact analyses (including cumulative) are as deficient. There is not proper assessment of how the proposed project (as a whole) will affect environmental resources. Instead of focusing on the strategies, policies and recommendations of the proposed project as an integrated management plan, the analysis focuses on project-specific examples from existing environmental impact reports. In other words, the Delta Plan Draft Program EIR looks to those prior reports for explanations for *project-level* physical impacts of the proposed project. In this way, the Delta Plan Draft Program EIR does not evaluate the effects of the proposed project, but instead is in effect "second

guessing" determinations made by the lead agencies in those other reports. The DSC is the lead agency on the Delta Plan, and by its own admission has no local or state land use or regulatory authority. While the DSC was delegated limited authority to determine whether "covered actions" are consistent with the Delta Plan, the final decision to proceed with a project remains with the lead agency – the project proponent.

Defective Thresholds of Significance: The thresholds of significance are unclear and may result in arbitrary impact conclusions. The Delta Plan Draft Program EIR provides that the impacts of the proposed project will be deemed significant if there are **"substantial"** impacts to water supply or biological resources. Those thresholds need but do not appear to reflect the DSC's Legislative directive and authorization – the mandate that the DSC develop a Delta Plan that furthers the coequal goals.

Defective Mitigation: The Delta Plan Draft Program EIR lacks mitigation measures that would address the overall impacts of the Delta Plan. It also improperly attempts to require other agencies which undertake a covered action to incorporate the Delta Plan Draft Program EIR's specifically delineated mitigation measures into their projects.

1. CONTEXT FOR THE MANDATE TO DEVELOPMENT A DELTA PLAN.

A. Previous Regulatory Actions that have Reduced Water Supply for Public Water Agencies.

From 1987-1992, California experienced drought conditions. During that period, statewide precipitation and annual stream flow was only about 75 percent and 50 percent of average respectively. By the fall of 1992, storage in California's major reservoirs was under 12 million acre-feet, almost 10 million acre-feet less than the annual average at that time. The drought increased urban water rationing, caused land fallowing and crop shifting, and stressed environmental resources.

During the 1987-1992 drought, declines of the Delta smelt and winter-run salmon resulted in both species being listed under the federal Endangered Species Act (ESA). Spring-run salmon, steelhead, and green sturgeon were also ultimately listed under the ESA. In efforts to protect these listed species, the National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (FWS) imposed additional regulations on the CVP and SWP to further constrain their operations.

In October 1992, Congress enacted the Central Valley Project Improvement Act (CVPIA). Among other changes, the CVPIA added to the purposes of the CVP: (1) protection, restoration and enhancement of fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California; and (2) addressing impacts of the CVP on fish, wildlife, and associated habitats. Through implementation of the CVPIA, the Department of the Interior has been dedicating at least 800,000 acre-feet of dedicated CVP yield annually for fishery purposes,

and hundreds of thousands of acre-feet of additional water for refuges and waterfowl. (*See* CVPIA, 10 Years of Progress, Fiscal Years 1993 – 2002, U.S. Department of the Interior, Bureau of Reclamation U.S. Fish & Wildlife Service (February 2004).)

At the end of the 1987-1992 drought, California also announced a comprehensive water management policy that facilitated additional regulations under the federal Clean Water Act (CWA) and the State Porter-Cologne Water Quality Control Act (Porter-Cologne) and new efforts to improve the Bay-Delta. In May 1995, the State Water Board adopted its 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin River Delta. The 1995 Bay-Delta Plan imposed new water quality objectives/standards intended to protect fish and wildlife beneficial uses.

To date, the regulations imposed pursuant to ESA, CVPIA, CWA, and Porter-Cologne have significantly reduced the long-term average delivery capabilities (quantity and reliability) of the SWP and CVP by hundreds of thousands of acre-feet per year.

In addition to water problems, the 2005 devastation of the Gulf Coast and New Orleans caused by Hurricane Katrina heightened California's awareness of the public safety and water supply risks presented by seismic events and levee stability concerns. As the Department of Water Resources (DWR) explained when it prepared its Delta Risk Management Strategy:

> The U.S. Geological Survey estimates that an earthquake of magnitude 6.7 or greater has a 62 percent probability of occurring in the San Francisco Bay Area between 2003 and 2032.... Such an earthquake is capable of causing multiple levee failures in the Delta Region which could result in fatalities, extensive property damage and the interruption of water exports from the Delta for an extended period of time. Potential earthquakes on the Hayward, Calaveras or San Andreas faults pose the highest risk to Delta Region levees.

(Delta Risk Management Strategy, Executive Summary for Phase 1 Report, p. 10.)

Sea level rise and changes in precipitation patterns induced by long-term climate changes are expected to further erode the reliability of California's water supply if no actions are taken to adapt and improve the resiliency of state, regional, and local water systems. Higher sea levels would increase salinity levels throughout the Delta, dramatically reducing the value of water conveyed through the Delta for environmental, municipal, industrial, and agricultural uses as a result of increased treatment costs and soil salt loading, respectively. Similarly, long-term changes in temperature could result in more variability in precipitation and run-off from year to year and season to season. Some estimates indicate that California will experience an increase in winter runoff and a decrease in spring and summer runoff, with a resultant decrease in water supply reliability. Shorter and more intense periods of run-off will also increase flood pressures in the Delta and further stress in-Delta levees. Moreover, the loss of snowpack to increased rainfall will shift run-off timing which will have significant effects on water management since the timing and need for water will not similarly shift in an equivalent fashion.

Due to the concurrent risks to the Bay-Delta ecosystem and water supply and reliability, several efforts have been undertaken to identify a solution, including the CalFed Bay-Delta Program, Delta Vision process, the Delta Risk Management Strategy, the BDCP, and the Delta Stewardship Council's preparation of a Delta Plan.

B. CalFed Bay-Delta Program.

Starting in the mid-1990s, the CalFed Bay-Delta Program (CalFed Program) was the effort by which state agencies, federal agencies, and stakeholders were working to improve the Bay-Delta ecosystem and water management capability. In August 2000, the CalFed Program Record of Decision for the CalFed Program PEIS/EIR presented a broad 30-year plan to meet those objectives and a more detailed "Stage 1" implementation plan to guide program development for its first seven years. Through CalFed, agencies and stakeholders worked together to invest billions of dollars for actions within the Delta, in the upstream watersheds, and in the water service areas, primarily in the Bay Area and southern California.

In April 2006, the CalFed Program issued a 10-Year Action Plan to refocus the CalFed Program based on evolving science and changing conditions in the Delta. The Plan responded to earlier independent reviews by the Little Hoover Commission, the Department of Finance, and management consultant KPMG. (CalFed Program, 10-Year Action Plan, Apr. 2006, available at www.calwater.ca.gov/content/Documents/10_Year_Action_Plan_Final.pdf, p. 13.) Those reviews had been called for by the Governor and largely focused on CalFed financing and governance issues. The 10-Year Action Plan noted that, in addition to changes in governance, a new direction for the CalFed Program is needed to respond to new scientific information becoming available and significant changes occurring in the Delta, including:

> (1) Delta Sustainability: Scientific information collected and research that is currently under way indicates that the current physical configuration of the Delta is not sustainable. Increasing risk of a significant seismic event in the Delta, coupled with sea level rise associated with global warming, puts Delta levees at high risk; and
>
> (2) Decline of Pelagic Organisms in the Delta: Population levels for pelagic organisms in the Delta, including important food web species and the listed delta smelt, are at record low levels and declining.

(*Id.*, p. 7.)

A major priority element of the 10-Year Action Plan was the development of a voluntary planning agreement and Habitat Conservation Plan/Natural Community Conservation Plan(s) for Delta and anadromous species. (*Id.*, pp. 52-53.) The 10-Year Action Plan notes that "several Bay-Delta system users...are working cooperatively to explore preparation of one or more Habitat Conservation Plans...", (*id.*, p. 52), and notes the first step is negotiation of a Planning Agreement. (*Id.*, p. 53.) This recommendation of the 10-Year Action Plan resulted in the BDCP, currently under development.

C. Delta Vision.

Delta Vision was created by Executive Order of the Governor on September 17, 2006, to "develop a durable vision for sustainable management of the Delta" so it can support environmental and economic functions important to the people of state. (Delta Vision Final Report, Nov. 30, 2007, pp. 68-69 [Appendix II containing Executive Order] [available at www.deltavision.ca.gov/BlueRibbonTaskForce/FinalVision/Delta_Vision_Final.pdf].) The Executive Order called for creation of an independent Blue Ribbon Task Force charged with completing a "vision" report and a "strategic plan" by October 31, 2008. (*Id.*, p. 70.) The Executive Order specifically directed that the Delta Vision process "inform and be informed by current and future Delta planning decisions such as those pertaining to the CalFed Program, Bay Delta Conservation Plan" and others. (*Id.*, p. 69.) The Task Force issued its Delta Vision report, "Our Vision for the California Delta," in December 2007, which restated as a primary recommendation the restoration of the Delta's ecosystem function as an integral part of a healthy estuary, including expanded areas of seasonal and tidal wetlands. (*Id.*, p. 9.) In October 2008, the Blue Ribbon Task Force issued the Delta Vision Strategic Plan, which contains specific recommendations for implementing the Delta Vision to "sustain the Delta in future decades while ensuring a reliable [Delta] water supply."[7] The Strategic Plan contains recommended strategies and actions, including restoration of tidal and riparian habitats and increased frequency of floodplain inundation, improving migratory corridors, addressing invasive species, relocating diversions and implementing conveyance improvements, revising flow standards and operating criteria, and improving water quality. (*Id.*, pp. ix-x.) Many of these recommended actions are now being pursued through the BDCP.

The Governor's 2006 Executive Order also charged a Committee of Cabinet Secretaries, the Delta Vision Committee, to review the completed work of the Task Force and make their own implementation recommendations to the Governor and the Legislature by December 31, 2008. (Delta Vision Final Report, Nov. 30, 2007, pp. 69-70.) On that date, the Committee issued the Delta Vision Committee Implementation Report summarizing its review of the Task Force's recommendations and proposing a timeline of fundamental actions to be taken in the next two years. The Committee agreed with all of the Task Force's basic recommendations, or "strategies," with the exception of the creation of the new recommended long-term governance structure, instead recommending creation of an interim Delta Policy Group. (*Id.*, pp. 13-14.) The Committee recommended eight fundamental actions to be pursued in the near term:

(1) A new system of dual water conveyance through and around the Delta to protect municipal, agricultural, environmental, and the other beneficial uses of water;

(2) An investment commitment and strategy to restore and sustain a vibrant and diverse Delta ecosystem including the protection and enhancement of agricultural lands that are compatible with Plan goals;

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[7] *See* Blue Ribbon Task Force, Delta Vision Strategic Plan, Oct. 2008, p.v. (available at deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/Delta_Vision_Strategic_Plan_standard_resolution.pdf).

(3) Additional storage to allow greater system operational flexibility that will benefit water supplies for both humans and the environment and adapt to a changing climate;

(4) An investment plan to protect and enhance unique and important characteristics of the Delta region;

(5) A comprehensive Delta emergency preparedness strategy and a fully integrated Delta emergency response plan;

(6) A plan to significantly improve and provide incentives for water conservation – through both wise use and reuse – in both urban and agricultural sectors throughout the state;

(7) Strong incentives for local and regional efforts to make better use of new sources of water such as brackish water cleanup and seawater desalination; and

(8) An improved governance system that has reliable funding, clear authority to determine priorities and strong performance measures to ensure accountability to the new governing doctrine of the Delta: operation for the coequal goals.

(*Id.*, pp. 1-2.)

It was becoming clear that the then-existing approach to managing the Delta was failing. By 2009, the reduction in and instability of water supply caused by regulation, in conjunction with hydrologic drought, was having devastating effects. There were substantial losses of permanent crops, thousands of acres of productive land fallowed, and destruction of farming businesses.[8] There was also social disruption and dislocation as well as environmental harms caused by, among other things, increased groundwater consumption and overdraft, land subsidence, and impairment of air quality. Urban economic losses among all agencies that rely upon water conveyed through the Delta have been estimated to range from $858 million per year for a 10 percent reduction in end water use to $6.7 billion per year for a 30 percent reduction.[9]

[8] Economists from U.C. Davis and the University of the Pacific concluded that in 2009, as a result of a relatively dry hydrology and water supply restrictions imposed on the SWP and CVP, the San Joaquin Valley population lost as many as 7,434 jobs, more than $278 million in income, and more than $368 million in overall economic output. (Michael J., et al. 2009. A Retrospective Estimate of the Economic Impacts of Reduced Water Supplies to the San Joaquin Valley in 2009 (Sep. 28, 2010).) Additional support can be found in several court decisions. (*Consolidated Delta Smelt Cases*, 717 F. Supp. 2d 1021, 1052 (E.D. Cal. 2010); *Consolidated Salmonid Cases*, 713 F. Supp. 2d 1116, 1148 (E.D. Cal. 2010); *San Luis & Delta-Mendota Water Authority v. Salazar*, 2009 WL 1575169 at *5-6 (E.D. Cal. 2009).)

[9] Berkeley Economic Consulting, Inc, 2010, "Residential Losses from Urban Water Shortages in California."

D. Delta Risk Management Strategy.

Through Water Code section 139.2 et seq., the California Legislature directed DWR to evaluate the potential impacts on water supplies from the Sacramento-San Joaquin Delta based on 50-, 100-, and 200-year projections for each of the following possible impacts on the delta: (1) Subsidence, (2) Earthquakes, (3) Floods, (4) Changes in precipitation, temperature, and ocean levels, (5) A combination of the impacts specified in paragraphs (1) to (4), inclusive. (Water Code, § 139.2.) To complete that evaluation and develop of "Delta Risk Management Strategy", DWR (1) assessed the performance of Delta and Suisun Marsh levees (under various stressors and hazards) and evaluate the economic, environmental, and public health and safety consequences of levee failures to California as a whole (Phase 1); and (2) developed and evaluated risk reduction strategies (Phase 2). At the end of each phase, DWR published reports. (Final Phase 1 Report, March 2009; Final Phase 2 Report, June 2011.)

The Phase 2 Report identifies three significant impacts that result of major flood or seismic events in the Delta and Suisun Marsh. They are (1) in-Delta losses, (2) loss of transportation and utility services, and (3) loss of water for out-of-Delta urban and agriculture users. The Phase 2 Report considered four scenarios to reduce the risk of those impacts occurring, which were compared on benefit-versus-cost valuations. The Phase 2 Report ranks the scenarios as follows:

(1) Isolated Conveyance Facility: Lowest cost for the highest economic benefit;

(2) Dual Conveyance: Second lowest cost for the second highest economic benefit;

(3) Through-Delta Conveyance: Third lowest cost for the third highest economic benefit; and

(4) Improved levees: Fourth lowest cost for the fourth highest economic benefit.

E. Bay Delta Conservation Plan.

At the recommendation of the U.S. Fish and Wildlife Service, DWR, the U.S. Bureau of Reclamation, many of the Public Water Agencies, U.S. Fish and Wildlife Service, National Marine Fisheries Service, the California Bay-Delta Authority, and the California Department of Fish and Game executing a Memorandum of Agreement (MOA) on July 28, 2006. Through the MOA, they agreed to develop a joint Natural Communities Conservation Plan/Habitat Conservation Plan – what has now become the BDCP. Roughly two months after the MOA was signed, those same entities were joined by other water users, and some non-governmental organizations in execution of the Planning Agreement Regarding the Bay Delta Conservation Plan. The fundamental purpose of the BDCP is to allow Reclamation and DWR to operate in-Delta facilities of the CVP and SWP consistent with the federal ESA and the California Natural Community Conservation Planning Act (NCCPA). The BDCP is intended to achieve that

purpose within specific Planning Goals, one of which is to "[a]llow for projects to proceed that restore and protect water supply, water quality, and ecosystem health within a stable regulatory framework." The purpose and goals were informed by past efforts within the Bay-Delta estuary and impacts to the water supplies conveyed through the Delta, including those described in this letter. A final EIR/EIS, Notice of Determination, and Record of Decision for the BDCP are projected to be complete in early 2013.

F. Delta Reform Act, Delta Stewardship Council, and the Delta Plan.

The Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) presented important legislative findings and declarations regarding the Delta. It also created the Delta Stewardship Council and authorized and provided specific direction to the Council to prepare the Delta Plan.

i. Findings, Declarations, Policies.

In the Delta Reform Act, the Legislature found that the "Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources." (Water Code, § 85001(a).) The Legislature did not expect the solution to that crisis to come with decreases in water used within or imported from the watersheds of the Sacramento and San Joaquin Rivers. Rather, the Legislature recognized the importance of that water:

> The economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed. More than two-thirds of the residents of the state and more than two million acres of highly productive farmland receive water exported from the Delta watershed.

(Water Code, § 85004(a).)[10] It thus found:

> Providing a more reliable water supply for the state involves implementation of water use efficiency and conservation projects, wastewater reclamation projects, desalination, and new and improved infrastructure, including water storage and Delta conveyance facilities.

(Water Code, § 85004(b).)

The Legislature presented its policy on how to balance between the need for Delta watershed water on the one hand and the need for efficiency and conservation projects, wastewater reclamation projects, and desalination on the other hand. That policy direction is provided in Water Code section 85021 which states:

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[10] "Delta watershed" is a term defined in the Delta Reform Act of 2009. It defines "Delta Habitat" as "the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region as described in the department's Bulletin No. 160-05." (Water Code, § 85086.)

> The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts. [emphasis added].

The view, apparently adopted by the DSC, that "reduce reliance" means to reduce the quantity of water conveyed through the Delta below existing levels is inconsistent with Legislative intent reflected in the Delta Reform Act, inconsistent with the BDCP, and represents a wholly improper approach for the Delta Plan and the Delta Plan Draft Program EIR.

As an initial matter, the "reduced reliance" language, irrespective of how it is interpreted, is not one of the objectives the Legislature declared inherent in the coequal goals for management of the Delta. (Water Code, § 85020.) It is also not part of the authorization and direction the Legislature provided to the DSC in carrying out its limited mandate to develop a Delta Plan. "Reduced reliance" does not appear in Water Code section 85300 et seq., the sections of the Water Code that detail the Legislative direction for the Delta Plan. The contribution by the DSC and its Delta Plan to the achievement of the state policy to "reduce reliance" is to make recommendations that "promote" development of, and investment in, additional alternative water supplies as part of a "statewide strategy."

Further, an interpretation of the "reduce reliance" language means to reduce the quantity of water conveyed through the Delta below existing levels is inconsistent with the legislative history. The present statutory language resulted from negotiation and significant changes from earlier versions of the Delta Reform Act. Below is a strike-out/addition version of the earlier Water Code section 85021 language:

> The policy of the State of California is to reduce reliance ~~dependence~~ on ~~water from~~ the Delta ~~Watershed, over the long term, for statewide water supply reliability~~ in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water-use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

(*Compare* Preprint Assembly Bill No. 1 (California Legislature—2009–10 Regular Session), Aug. 4, 2009, at p. 4 *with* Water Code, § 85021.) These changes represent policy choices by the Legislature.

There are four major legislative policy choices embedded in the revisions to the language of Water Code section 85021 from the preprint versions of the Delta Reform Act to that which

was ultimately signed by the Governor, related to water management in the areas that rely upon water developed in the Sacramento River watershed and conveyed through the Delta:

(1) *Substitution of "**reliance**" for "**dependence**".* The change represents an important distinction. Reduced "dependence" would require permanent, alternative supplies. Reduced "reliability" and "reliance" reflect management variables that agencies consider in developing their water supply portfolios and year-to-year operational scenarios, to allow for absorbing uncertainty in meeting demands.

(2) *Substitution of "**future water supply needs**" for reduction "**over the long term**".* Combined with the change to "reliance" from "dependence", the substitution of "to meet California's future water supply needs" reflects the Legislature's intent to (a) acknowledge the ongoing importance of agencies continuing to receive water at levels they received historically, and (b) admonish agencies to invest in new alternative supplies to offset their future water supply needs, rather than to expect to increase supplies with water conveyed through the Delta to meet all of those needs.

(3) *Addition of "**statewide strategy of investing**".* An addition reflecting legislative intent that meeting the policy and related directives set forth in section 85021 can only be achieved on a "statewide" basis and that the "strategy" should be established through a "statewide" process.

(4) *Addition of Delta "**Watershed**".* The only change in the second sentence of the section is also one with import. Agencies within the Delta watershed cannot reduce their "dependence" on it for their water supplies. However, they can "improve" their "regional self-reliance" to better buffer the impact of drought or regulatory requirements that may at times necessitate their diverting less water from the system, consistent with Area of Origin and water rights provisions of law. The Legislature determined that Water Code section 85021's "improve [ ] regional self-reliance" directive thus was applicable to "[e]ach region that depends on water from the Delta watershed" rather than only those areas served water conveyed through the Delta.

As a result, through Water Code section 85021, the Legislature explained that California must continue to invest in regional supplies, conservation, and water use efficiency, not to meet existing needs, but to ensure sufficient supplies exist, given instability in reliability, to meet "California's future water supply needs." (Water Code, § 85021.) And, the Legislature made plain it was looking for improvements in "regional self-reliance for water", not by creating water supply deficits by pressing for reductions in deliveries of water from the watersheds of the Sacramento and San Joaquin Rivers, but through each region dependent upon water from the watershed investing "in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts." (Water Code, § 85021.)

ii. The Delta Plan Authority and Directive.

The Delta Plan is intended to be "the comprehensive, long-term management plan for the Delta." (Water Code, § 85059.) Implementation of the Delta Plan must improve the Delta ecosystem and water supply. The scope of the Delta Plan is limited:

> The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.

(Water Code, § 85302(b).)

To achieve improvements in the Delta ecosystem, the Delta Plan must include measures that promote:

(1) Viable populations of native resident and migratory species;

(2) Functional corridors for migratory species;

(3) Diverse and biologically appropriate habitats and ecosystem processes;

(4) Reduced threats and stresses on the Delta ecosystem; and

(5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

(Water Code, § 85302(c)(1)-(5).) And, the Delta Plan must address the following, to promote a more reliable water supply:

(1) Meeting the needs for reasonable and beneficial uses of water.

(2) Sustaining the economic vitality of the state.

(3) Improving water quality to protect human health and the environment.

(Water Code, § 85302(d)(1)-(3).) The Legislature directed the DSC to comply with these mandates by using "best available science." (Water Code, §§ 85302(g), 85308(a).)

The Legislature mandated that the Delta Plan not only promote "statewide water conservation, water use efficiency, and sustainable use of water", but also "options for new and improved infrastructure relating to the water conveyance in the Delta..." (Water Code, §§ 85303, 85304.)

The DSC has no discretion whether to include the Bay Delta Conservation Plan in the Delta Plan, provided the California Department of Fish and Game determines that the BDCP:

(1) Satisfies the Natural Community Conservation Planning Act,

(2) Satisfies the California Environmental Quality Act, including:

(A) An analysis of a range of flow criteria, rates of diversion, and other operational criteria...;

(B) An analysis of a range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines;

(C) Consideration of the potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report;

(D) Consideration of the potential effects on migratory fish and aquatic resources;

(E) Consideration of the potential effects on Sacramento River and San Joaquin River flood management;

(F) Consideration of the resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster; and

(G) Consideration of the potential effects of each Delta conveyance alternative on Delta water quality.

(Water Code, § 85320(b).)

Once complete, the DSC's role shifts to that of an appellate body. The DSC will hear appeals from:

> Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the council.

(Water Code, § 853225.10(a).) The DSC may deny the appeal or remand the matter to the agency proposing the action. In this latter event, the agency may continue with its action as originally planned, even if inconsistent with the Delta Plan, or modify the action to respond to the findings of the DSC. (Water Code, § 853225.25.) In either case, the agency, prior to proceeding with the action, must file a revised certification of consistency that addresses each of the findings made by the Council and file that revised certification with the DSC. (Water Code, § 853225.25.) The Council's determinations regarding consistency with the Delta Plan are subject to judicial review.

2. LEGAL STANDARDS FOR PROGRAM ENVIRONMENTAL IMPACT REPORT.

"The purpose of an environmental impact report is to give the public and government agencies the information needed to make informed decisions, thus protecting not only the environment but also informed self-government." (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162, quotations and citation omitted.) "The [environmental impact report] is the heart of CEQA, and the mitigation and alternatives discussion forms the core of the EIR." (*Ibid.*) The environmental impact report "'must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26, citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.)

The same considerations that apply to a project environmental impact report apply to a program environmental impact report. A program environmental impact report is designed to "(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an [environmental impact report] on an individual action, [¶] (2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis, [¶] (3) Avoid duplicative reconsideration of basic policy considerations, [¶] (4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, [and] [¶] (5) Allow reduction in paperwork." (CEQA Guidelines, § 15168(b).)[11] A less detailed analysis is not automatically permitted because a program environmental impact report is used as opposed to a project environmental impact report. The "semantic label accorded to the [environmental impact report]" does not determine the level of specificity required. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners of the City of Long Beach* (1993) 18 Cal.App.4th 729, 741-742.) Instead, the "'degree of specificity required in an [environmental impact report] will correspond to the degree of specificity involved in the underlying activity which is described in the [environmental impact report].'" (*In re Bay-Delta, supra*, 43 Cal.4th at 1176, citing CEQA Guidelines, § 15146.) As such, the detail in the Delta Plan Draft Program EIR must reflect the level of detail in the Plan.

[11] California Code of Regulations, title 14, division 6, chapter 3 constitute the "CEQA Guidelines."

An environmental impact report from which subsequent environmental impact reports will draw, or "tier," should not be used as a device to defer analysis of present issues. "Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases *when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases.*" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431, italics added.) "'[T]iering' is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause," and "fundamental and general 'general matters'" should be addressed in the first-tier EIR. (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.) The Delta Plan Draft Program EIR, therefore, must identify and consider foreseeable significant environmental impacts that will result from the adoption of the Delta Plan itself.

Both project and program environmental impact reports must include "accurate, stable and finite" project descriptions. (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370 (finding that program EIR for a hazardous waste management plan must have "[a]n accurate, *stable* and *finite* project description is the sine qua non of an informative and legally sufficient EIR") (*italics added, quotations and citations omitted*).)

Additionally, CEQA requires an EIR to evaluate impacts compared to a defined set of baseline conditions. The baseline for analysis is normally the existing physical conditions at the time of the issuance of the Notice of Preparation, or at the start of the environmental review process. (CEQA Guidelines, § 15125(a).) Baseline assumptions underlying the analysis in an environmental impact report must be apparent and must not be based on hypothetical scenarios. A failure to "clearly and conspicuously identify the baseline assumptions" in the environmental impact report degrades the usefulness of an environmental impact report and contributes to its inadequacy. (*See San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659.) Although previous established levels of a particular use have been considered part of the existing environmental setting, "the baseline environmental setting must be premised on realized physical conditions on the ground, as opposed to merely hypothetical conditions allowable under existing plans." (*Id.*, p. 658 (citations omitted).) Consequently, an EIR's analysis of the project may not assume that an unenforceable project design feature or mitigation measure will actually be implemented. (*Sunnyvale West Neighborhood Ass'n. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1380.) Thus, the project description for the Delta Plan Draft Program EIR, on which all other parts of the environmental impact report analysis are based, must be accurate, stable, and finite and the analysis must use an established, not a hypothetical, baseline.

The discussion of mitigation and alternatives is "the core of an EIR." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) Without a discussion that adequately identifies and analyzes both feasible mitigation measures and feasible alternatives, an environmental impact report cannot implement CEQA's key policy of avoiding or reducing the project's significant environmental impacts. (*See* Pub. Resources Code, §§ 21002, 21002.1(a), 21100(b)(4), 21150.)

A lead agency may not rely on mitigation measures to mitigate a project's potential impacts unless the measures are enforceable. (Pub. Resources Code, § 21081.6(b); CEQA

Guidelines, § 15126.4 (a)(2).) In addition, "a mitigation measure cannot be used as a device to avoid disclosing project impacts." (*San Joaquin Raptor Rescue, supra*, 149 Cal.App.4th at 663-664 (citations omitted).)

The environmental impact report must set forth alternatives to the project "necessary to permit a reasoned choice" and examine in detail "the ones that the lead agency determines could feasibly attain most of the basic objectives of the project." (*See In re Bay-Delta, supra*, 43 Cal.4th at 1163, quotations and citation omitted.) An environmental impact report's alternatives analysis "must contain sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project" and "'must explain in meaningful detail ... a range of alternatives to the proposed project and, if [the agency] finds them to be infeasible, the reasons and facts that [the agency] claims supports its conclusion.'" (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 546, citing *Laurel Heights Improvement Ass'n. v. Regents of the University of California* (1988) 47 Cal.3d 376, 406, quotations and citations omitted; CEQA Guideline, § 15126.6(d).) Furthermore, the analysis of alternatives may not be "devoid of substantive factual information from which one could reach an intelligent decision as to the environmental consequences and relative merits of the available alternatives to the proposed project" and may not omit "relevant, crucial information." (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873.)

3. ADDITIONAL CEQA DEFICIENCIES OF THE DELTA PLAN DRAFT PROGRAM EIR.

The Pubic Water Agencies offer the following, additional comments on the Delta Plan EIR.

A. The Delta Plan Draft Program EIR Fails to Evaluate Impacts of the Entire Proposed Project and Its Alternatives.

The Delta Plan Draft Program EIR's overall approach to evaluating the impacts of the Delta Plan is inadequate because it fails to comprehensively assess the impacts of the entirety of the plan and its purported alternatives. CEQA requires an environmental impact report to evaluate the significant environmental impacts of the "proposed project." (CEQA Guidelines, § 15126.2.) Here, the Delta Plan is the proposed project. An environmental impact report prepared for a broad, policy-level plan such as the Delta Plan is known as a program environmental impact report. According to the CEQA Guidelines, a program environmental impact report is intended to:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an environmental impact report on an individual action;

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis;

(3) Avoid duplicative reconsideration of basic policy considerations;

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts; [and]

(5) Allow reduction in paperwork.

(CEQA Guidelines, § 15168(b). *See also id.*, subd (c) ("a program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as *specifically and comprehensively* as possible) (italics added).)

Essentially a program environmental impact report is designed to analyze program-wide effects, broad policy alternatives, programmatic mitigation measures, and cumulative impacts and basic policy considerations, as opposed to the impacts of specific projects within the program. (CEQA Guidelines, § 15168(b).) Even though a program environmental impact report is typically more general than a project environmental impact report, it still must include all of the required contents of an environmental impact report and must foster meaningful public involvement and informed decision making. (CEQA Guidelines, §§ 15120-15132.)

Rather than evaluating the entire plan or alternatives, the Delta Plan Draft Program EIR generically predicts various types of individual projects that might be developed in the future under the Delta Plan by other agencies and generically discusses the types of impacts that might occur on any given individual project. By focusing on the individual future projects, the Council has essentially segmented the Plan into individual components in violation of CEQA, thereby abdicating any attempt to determine the Plan's overall impact if multiple future projects are developed under the Plan - which is the most likely future scenario. Since the Delta Plan Draft Program EIR does not evaluate the Plan's overall impacts, it achieves none of the five objectives for a program EIR as set forth in the CEQA Guidelines. Additionally, the Delta Plan Draft Program EIR is counter to the legislative intent of CEQA which "[r]equires governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment." (Pub. Resources Code, § 21001(g).

To make the Delta Plan Draft Program EIR adequate, the Council should identify the reasonably foreseeable future projects and a reasonable range of alternatives, and then evaluate at a program level the overall impacts of all such projects. In other words, the Council should develop a "build-out" scenario for all reasonable foreseeable actions that are within the proposed project. Once such assumptions and scenarios are developed, then reasonable, and in some cases quantitative, predictions about the impacts to each resource area would be possible. Without such an approach, the Delta Plan Draft Program EIR does not evaluate the impacts of the whole plan.

As an example, the Delta Plan Draft Program EIR fails to evaluate the incremental impact that implementation of the Delta Plan would have on the resources of the Delta. CEQA requires an environmental impact report to identify and focus on the significant environmental effects of the proposed project. (CEQA Guidelines, §15126.2(a).) Not withstanding this requirement, in chapter 2B, Section 2.2, the Delta Plan Draft Program EIR states that it "does not seek to evaluate the environmental impacts of the incremental change in those actions, activities

and projects that could result from the Delta Plan" because the Delta Plan will only "nudge" already proposed projects and the "degree of influence on future, unknown projects, is unclear." These statements are inconsistent with the intent that the Plan's policies are to affect the outcome of future "covered actions."

One of CEQA's fundamental purposes is to ensure that public agencies take responsibility for the impacts that their projects will have on the environment. Courts have held that CEQA "requires public officials, in approving environmentally detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to *substantial evidence* in support." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124, italics added.) CEQA includes such a purpose in order to "enable the public to determine the environmental and economic values of their elected and appointed officials, thus allowing for appropriate action come election day should a majority of the voters disagree." (CEQA Guidelines, § 15003(e), citing *People v. County of Kern* (1974) 39 Cal.App.3d 830.) Despite these requirements, the Delta Plan Draft Program EIR attempts to obfuscate the true impacts of the Delta Plan, by repeatedly claiming that the Council's action is "merely" the adoption of the Delta Plan and that it is really only the later activities of "other agencies" that will cause impacts on the environment. (e.g., Delta Plan Draft Program EIR, p. 2B-1 *et seq.*)

In fact, in section 1.4, the Delta Plan Draft Program EIR states that "the adoption of the Delta Plan by the Council could influence the nature, timing, or other aspects of decisions and actions by other agencies (particularly when those actions are 'covered actions' under the Delta Reform Act)." For example, the Delta Plan Draft Program EIR states that "agencies undertaking covered actions must incorporate [the mitigation measures identified in the Delta Plan Draft Program EIR] into their projects or plans in order for any such covered action to be consistent with the Delta Plan." (Delta Plan Draft Program EIR, p. 2B-2.)

The failure to identify and evaluate the Delta Plan's incremental effect on Delta resources contravenes one the main purposes of an environmental impact report, which is to determine the effect of a project on the environment in the future. While the future impacts resulting from the adoption of the Delta Plan may not be easy to predict, CEQA allows reasonable assumptions to be the basis for the determination of future outcomes. CEQA recognizes that "drafting an EIR necessarily involves some degree of forecasting and that while foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines, §15144.) The Delta Plan Draft Program EIR's blanket statement that the degree of the unknown excuses any attempt to determine the proposed project's incremental effect on future actions and activities is an inadequate approach to CEQA compliance and defeats the purpose of CEQA. (Pub. Resources Code, §§ 21002.1 & 21003.) Indeed, as demonstrative in subsection (I) below, there are significant impacts that will result from implementation of the proposed project that are not identified in the Delta Plan Draft Program EIR.

Additionally, the Delta Plan Draft Program EIR inappropriately uses a handful of prior environmental impact reports that were prepared from certain categories of water-related projects to extrapolate the conclusions in those limited-in-number and narrowly-applicable environmental impact reports to any potential future projects that might occur under the Plan. This approach is

inadequate for several reasons. First, the universe of prior environmental impact reports considered is very small and does not represent a broad spectrum of project types or locations that are likely to be developed under the Delta Plan. Additionally, the analyses in those prior environmental impact reports are project level and thus even the most general analyses are not likely to apply to every future project, even those of the same category. Thus, this whole approach is inadequate.

Moreover, the Delta Plan Draft Program EIR's approach in describing representative projects and their environmental impact reports does not even disclose with any specificity the environmental impacts that would occur. To the extent that certain known projects are identified (e.g., Los Vaqueros Reservoir), there should be more specific discussion of the impacts – especially for those for which prior CEQA or NEPA documents have been prepared. In most places in the Delta Plan Draft Program EIR, the only thing utilized from those prior environmental impact reports are the conclusions regarding whether the impacts were significant. There is no attempt to actually summarize the impacts from those prior documents and incorporate them by reference. Finally, as discussed above, the emphasis on individual future projects ignores the overall impacts of the Plan's implementation on each resource topic.

In effect, the DSC attempts to meet its CEQA obligations by treating the Delta Plan Draft Program EIR as if looking through the lens of a subsequent responsible agency (assessing future project-level effects) rather than meeting its responsibility to articulate the impacts of ***its*** own plan as ***the*** lead agency. Throughout the Delta Plan Draft Program EIR, the text repeats a mantra in one form or another apparently intended to inoculate the Council and the Delta Plan Draft Program EIR from criticisms regarding fundamental CEQA compliance and the adequacy of the "analysis" undertaken in the document: "the proposed project does not direct the construction of specific projects, nor would projects be implemented under the direct authority of the Council." Public Resources Code section 21067 clearly states that, "Lead agency means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment" [emphasis added]. Therefore, as the lead agency, the DSC should be addressing the impacts of the Delta Plan's actions to further the coequal goals within the context of the broader DSC strategies, programs, and projects that will become part of the Plan. Comments and analyses on project-specific activities by other agencies should be reserved for CEQA processes where the DSC would act as a responsible agency.

B. The Delta Plan Draft Program EIR does not Contain an Accurate and Clearly Written Statement of Project Objectives.

An EIR must include a "statement of objectives" sought by the proposed project which includes the underlying purpose of the project. (CEQA Guidelines, § 15124(b).) The Delta Plan's objectives are provided in the legislation and include the two coequal goals (i.e., providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem), as well as several specified sub-goals and strategies. (See Wat. Code, §§ 85020 and 85300 et. seq.) However, the Delta Plan Draft Program EIR does not use those clear statutory objectives as the objectives for CEQA purposes. Instead, it develops a separate set of objectives that are different from the statutory objectives. (Delta Plan Draft Program EIR, p. 1-4.) This deviation from the legislative objectives is confusing and distracts from the actual, legislative mandated Delta Plan objectives. Moreover, the inconsistency with the actual Project

objectives is of particular concern with respect to the BDCP, which the Legislature mandated would be incorporated into the Delta Plan if specific criteria are met. (Water Code, § 85320(b).) While one of the Delta Plan Draft Program EIR's stated Project objectives includes being "consistent with specific statutory content requirements for the Delta Plan (Water Code sections §§ 85302(c) through (e), 85303-85308)", no reference is made to the requirement under section 85320(e) that the Delta Plan must also include the BDCP. As a result of the following arbitrarily derived Project objectives, neither the proposed project nor its alternatives will achieve the statutory objectives, which included the purposes of the BDCP.

C. The Project Description is not Stable and is Subject to Change.

The Delta Plan Draft Program EIR violates CEQA because it contains an unstable and constantly changing project description. An accurate, stable, and finite project description is the *sine qua non* of CEQA. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 185; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645.) It allows the lead agency to identify the proper environmental baseline, to evaluate the no-project alternative, to develop a range of reasonable and viable alternatives, to consider mitigation measures, and to balance a project's benefits against its environmental costs. (*Id.*, pp. 192-193.)

The proposed project is inconsistent and misleading. It does not maintain a stable or accurate description of the DSC's authority and influence in implementing the Delta Plan. For example, the Delta Plan Draft Program EIR discusses how the DSC "interprets" its discretionary action, beyond that of the Delta Plan adoption. On page 1-13, lines 30-33, the Delta Plan Draft Program EIR states, "However, adoption of the Delta Plan by the Council could influence the nature, timing, or other aspects of decisions and actions by other agencies (particularly when those actions are "covered actions" under the Delta Reform Act)." As discussed below and elsewhere in this letter, the DSC's authority extends to that of a responsible agency during the CEQA process, by commenting on other agencies' notices of preparation and draft environmental impact reports, along with providing presentations at public meetings and hearings. The other mandatory requirements fall with the certification of consistency. As noted in Water Code section 85225, "A state or local public agency that proposes to undertake a covered action, *prior to initiating the implementation of that covered action*, shall prepare a written certification of consistency...." (Italics added.) As noted in this section, the certification of consistency would be submitted prior to that agency initiating project implementation. However, CEQA approval is not necessarily the same as initiating project implementation. Hence, the influence the DSC has over the project when the agency submits its certification (as opposed to commenting during the CEQA process) is not as substantial as the Delta Plan Draft Program EIR section would otherwise indicate. The process of the certification of consistency would actually fit within the parallel processes of regulatory permits and other approvals required for projects by local and state public agencies, after CEQA approval. Yet, the project description in the Delta Plan Draft Program EIR misrepresents the authority of the DSC in this matter.

With respect to its authority under the Water Code to impose project-level mitigations on lead agencies, the description of the proposed project is completely misleading and inconsistent with law. The Delta Plan Draft Program EIR states that, "If the covered action is found to be

inconsistent, the action or project may not proceed until it is revised so that it is consistent with the Delta Plan." (Delta Plan Draft Program EIR, p. 1-4, lines 30-31.) Later in the Delta Plan Draft Program EIR, it states similarly:

> If, after hearing the appeal, the Council finds that the action is not consistent with the Delta Plan, the State or local agency may not proceed with the project unless it submits a revised certificate of consistency, which in turn could be challenged by any person through an appeal to the Council (Water Code § 85225.25).

(Delta Plan Draft Program EIR, p. 2A-1, lines 25-28.) This statement does not comport with Water Code sections 85225 through 85225.30. It is the responsibility of agencies with covered actions to submit their certificates of consistency to the Council prior to initiating the implementation of those actions. If an appeal occurs or if the Council deems that the covered action is not consistent, then the agencies:

> *may* determine whether to proceed with the action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, *prior to proceeding with the action*, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

(Water Code, § 85225.25 (emphasis added).) Thus, nothing in Water Code section 85225.25 or any other provision of the Delta Reform Act prohibits a local agency from proceeding with its project or allows for a further appeal to the Council. Nothing in the Delta Reform Act allows the DSC to place mandatory requirements on the agencies regarding mitigation or to delay the implementation of the project, other than the mandatory process of submittal/repeal of the certificate of consistency.

Third, the proposed project itself has been under continuous revision while the Delta Plan Draft Program EIR has been prepared and further changes to the proposed project are underway *at the same time the public is reviewing this Draft EIR*. The DSC released its 5th draft of the Delta Plan in August, 2011. The DSC has announced that there will be a 6th draft Delta Plan issued in mid-March for public comment prior to the DSC's reviewing a 7th version in mid-April and subsequently adopting a Final Delta Plan. DSC staff and DSC members have stated publicly that there will likely be "significant" changes included in the 6th Draft Delta Plan when compared to the 5th Draft, which is the "proposed project" for purposes of the Delta Plan Draft Program EIR. Consequently, it is possible, and apparently *expected*, that the "proposed project" – the 6th Draft and ultimately the Delta Plan approved by the Council – will be materially different than that described in the 5th Draft Delta Plan and supposedly "analyzed" in the Delta Plan Draft Program EIR. Even though a program environmental impact report may contain a more general project description than a project-level environmental impact report, it must nevertheless be stable throughout the CEQA review process to provide the public and other agencies of a meaningful opportunity to comment on the actual plan that will be proposed for adoption.

D. The Delta Plan Draft Program EIR does not Adequately Present the Baseline.

An environmental impact report must include a clear statement of what the existing setting, i.e., baseline condition, was used for purposes of determining the significance of environmental impacts. (*See, e.g.*, CEQA Guidelines, § 15125. *See also Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48 and *Sunnyvale West Neighborhood Association v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351.) The Delta Plan Draft Program EIR states that, "[t]he baseline for assessing the significance of impacts of the Proposed Project is the existing environmental setting." (Delta Plan Draft Program EIR, p. 2A-85.) However, the Delta Plan Draft Program EIR gives no description of what those existing conditions actually are or how those existing conditions were determined. Specifically, the Delta Plan Draft Program EIR does not make clear what the assumed hydrologic or regulatory conditions were, or what were the assumed conditions of water storage and conveyance facilities (i.e., surface/groundwater storage). Absent such a description, the Delta Plan Draft Program EIR's baseline usage cannot be supported by substantial evidence. Most simply put, it is not based on any discrete facts. (*See* CEQA Guidelines, § 15384 ["substantial evidence" includes facts, but not mere opinions or unsupported conclusions].)

Further, what description of the environmental setting is presented is inaccurate and misleading. For example, under the Water Resources section and in an apparent attempt to support its overreliance on development of alternative local water supplies to meet existing and future reasonable and beneficial uses of water, the Delta Plan Draft Program EIR states that "[h]istorically, local water resources constituted the backbone of California's water supply reliability." (Delta Plan Draft Program EIR, p. 3-6.) This statement has no support. Historically, local supplies in many areas of the State were insufficient to meet the then existing demand. Inadequate and unreliable supplies resulted in significant environmental impacts, mitigated by the development of imported supplies. (*See also* Delta Plan Draft Program EIR, p. 3-4 [recognizing the CVP and SWP were constructed and operated to provide supplemental water].)

Also, the study area for water resources is divided into sections that are not scientifically based and results in undue repetition, confusion, and inaccuracies. As presented in the Water Resources section, the study area "includes three main areas: the Delta and Suisun Marsh, the Delta watershed, and the areas outside of the Delta that use Delta water. The Delta watershed includes the tributary rivers that flow into the Delta from the Sacramento River watershed and the San Joaquin River watershed." (Delta Plan Draft Program EIR, p. 3-1.) A technically accurate division of hydrologic regions is presented in the California Water Plan, Update 2009. (California Water Plan, Update 2009, p. 4-10.)

Examples of how the current division of the study area led to duplication and a lack of clarity, and incorrect statements are numerous. For example, on page 3-13, the Delta Plan Draft Program EIR discusses "the major users of Delta surface water are the CVP and SWP." (Delta Plan Draft Program EIR, p. 3-13.) However, the water used by the CVP and SWP is not water that originates in the Delta. It is water conveyed through the Delta. Likewise, page 3-16 presents the Sacramento River and San Joaquin River as "tributary" to the Delta. That is not correct. The Delta is a formation occurring because of the confluence of the Sacramento River,

San Joaquin River, and the San Francisco Bay. Also, important elements of the environmental setting on water resources are missing. For example, the description of the Sacramento River watershed water use and infrastructure is incomplete. Absent is a discussion of non-CVP and non-SWP water users and infrastructure. (*See* Delta Plan Draft Program EIR, pp. 3-20 to 3-21.)

The Delta Plan Draft Program EIR is inconsistent with CEQA because it does not account for the rapidly changing circumstances affecting water supply within the State of California. Where, as here, changing conditions may affect an agency's significance conclusions, (*see* Section 1, Context For The Development Of A Delta Plan, herein), courts have held that the lead agency must take some account of those changing conditions by considering a range of circumstances in the baseline. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552.) Accordingly, the DSC's failure to describe the physical baseline conditions used is compounded by its admitted use of one moment in time – which is not representative of overall water supply conditions in California – as a baseline, rather than the consideration of overall water supply conditions.

E. The Delta Plan Draft Program EIR contains an Inadequate Description and Scope of Alternatives.

The Delta Plan Draft Program EIR is inadequate because it does not contain an adequate range of alternatives, the alternatives presented do not lessen the impacts of the proposed project to less then significant, and the descriptions of the alternatives are incomplete.

An environmental impact report must describe a range of reasonable alternatives to the proposed project, which would feasibly attain most of the basic project objectives but would avoid or substantially lessen one or more of the significant environmental impacts of the project. (CEQA Guidelines, § 15126.6(a).) The Supreme Court has clearly stated that one of an environmental impact report's major purposes is to ensure that the lead agency thoroughly assesses all reasonable alternatives to a proposed project. (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.) The Supreme Court has also held that the alternatives discussion is the core of an environmental impact report and that the range of alternatives in an environmental impact reprot is intended to provide the public and decision makers with meaningful choices. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.)

First, the alternatives analyzed in the Delta Plan Draft Program EIR do not constitute a range of reasonable alternatives as required by CEQA (*See* CEQA Guidelines, §15126.6(a)) because they assume decreasing the amount of water available, and thus do not meet the project objectives – specifically, they are not compatible with one of the Delta Reform Act's coequal goals of increasing water supply reliability and the Bay Delta Conservation Plan's Goals, which include the protection and restoration of water supplies. Indeed, the proposed project and alternatives 2 and 3 appear to significantly reduce the amount of water conveyed through the Delta (although how much these deliveries will be reduced is not disclosed in the Delta Plan Draft Program EIR).

An alternative that does meet CEQA's definitional requirements was proposed by a coalition of water users. On June 10, 2011, the "Ag-Urban Coalition" submitted an Alternate

Delta Plan to the DSC for its consideration and inclusion as a "stand-alone" alternative for analysis in the Delta Plan Draft Program EIR. This alternate plan: (a) is consistent with its limited delegated authorities and jurisdiction; (b) results in concurrent furtherance of the coequal goals; (c) promotes the Council's clearly designated role as a facilitator/coordinator of state agency actions related to the Delta; (d) pursues the development of a robust science program and plan for improving Delta management; (e) kick-starts an aggressive approach to prioritizing levee investments in the Delta to protect lives and state interests; and, (f) supports, rather than impedes, incorporation and implementation of the BDCP. While the Delta Plan Draft Program EIR asserts that Alternative 1B is the Ag-Urban Coalition Alternate Plan, the description of Alternative 1B significantly mischaracterizes various components of the Coalition's proposal and fails to include the full suite of near, medium, and long-term actions proposed by the Ag-Urban Coalition in Alternative 1B. While Alternative 1B may reflect an "alternative" in the eyes of the DSC staff, it should not and cannot be considered the same as the Ag-Urban Coalition's alternative.

Second, there is no analyses that even indicate that the alternatives decrease significant environmental effects of the proposed project.

Third, the alternatives included in the Delta Plan Draft Program EIR have not been determined to result in any truly meaningful differences in environmental impacts. An environmental impact report must include sufficient information about each alternative to allow a meaningful evaluation, analysis, and comparison with the proposed project. (CEQA Guidelines, §15126.6(d).) The courts have held that general qualitative comparisons such as "greater than" or "lesser impacts" than the proposed project are not adequate. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.) Nevertheless, the Delta Plan Draft Program EIR relies completely on a "greater impacts/lesser impacts" approach to alternatives with no attempt to quantify the differences for any of the resource topics. Consequently, the alternatives discussions are overly generalized and do not allow for a useful comparison as required by CEQA.

F. The Delta Plan Draft Program EIR contains an Inadequate Evaluation of the Cumulative Impacts and does not Identify the Proposed Project's Incremental Contribution to those Impacts.

An EIR must discuss cumulative impacts when a project's incremental effect is cumulatively considerable. (CEQA Guidelines, § 15130(a).) A "cumulative impact" is defined as the:

> [C]hange in the environmental from the incremental impact of the (proposed) project when added to other closely related past, present and reasonably foreseeable probably future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

(CEQA Guidelines, § 15355(b).) Here, the impacts of the proposed project must be combined with those of other past, present, and reasonably foreseeable future projects causing related impacts. However, because the Delta Plan Draft Program EIR does not describe the overall

impact of the proposed project, any attempt to combine the impacts of the proposed project with other actions, would be inherently flawed. Although the cumulative analysis lists dozens of related actions, programs, and projects (Table 22-1), it does not adequately add the impacts of the proposed project to those listed items. Nor is there any meaningful evaluation of the overall impacts of the proposed project together with the other the listed projects. The result is the failure to actually describe the overall cumulative effect.

The Delta Plan Draft Program EIR also fails to identify the appropriate geographical boundaries for each environmental category in which to consider applicable related projects for the cumulative impact analyses. (CEQA Guidelines, §§ 15130(a)(2) & 15130(a)(3)). For example, a watershed's geographical boundaries with its particular set of related projects would be far different than that for related projects found in certain air basins, in order to conduct hydrological and air quality cumulative impact analyses, respectively.

Additionally, since the impacts of the proposed project are not identified in a meaningful way, there is no identification of the incremental contribution of the proposed project to the cumulative impacts for any of the resources.

Finally, the analysis and discussion is so general and qualitative that it does not capture the magnitude or intensity of the cumulative problems that might occur if the proposed project and all of the projects in Table 22-1 were ever implemented.

G. The Delta Plan Draft Program EIR contains Conflicting and Confusing "Significance" Conclusions which Deprive the Document of its Value to the Public and Decision-Makers.

CEQA requires decision-makers to prepare findings for each significant impact identified in an EIR. (CEQA Guidelines, § 15091.) To enable decision-makers to effectively prepare findings, every impact disclosed in an EIR must be identified as either being significant or less-than-significant. Without correctly identifying the significance of each impact, the decision-makers will be unable to make the proper findings. Additionally, the significance conclusions must be supported by substantial evidence. Based on these requirements, the significance conclusions in the Delta Plan Draft Program EIR are inadequate. For many of the impacts discussed in the Delta Plan Draft Program EIR, the analysis reveals that the impacts of future projects could be mitigated to less-than-significant but the Delta Plan Draft Program EIR nevertheless concludes that all impacts are significant. Other analyses appear to support a "less-than-significant" conclusion, yet the Delta Plan Draft Program EIR conclusions that the impacts are significant. And in all cases, conclusions are not compared to or analyzed in relationship to the stated significance thresholds in each chapter. As a result, the "significance" conclusions are confusing and may not be supported by substantial evidence.

H. The Delta Plan Draft Program EIR's Mitigation Measures Fail to Comply with CEQA.

The Delta Plan Draft Program EIR's mitigation measures fail to comply with CEQA in two respects. First, the Delta Plan Draft Program EIR lacks mitigation measures that would address the overall impacts of the Delta Plan. Second, the Delta Plan Draft Program EIR

improperly attempts to require other agencies which undertake a covered action to incorporate the Delta Plan Draft Program EIR's mitigation measures into their project in the future. This is done without any attempt to make such mitigation part of the Delta Plan itself.

i. The Delta Plan Draft Program EIR lacks Mitigation Measures that would Address the Overall Impacts of the Proposed Project.

An EIR must describe feasible measures which would mitigate any significant environmental impacts of the proposed project. (CEQA Guidelines, § 15126.4(a)(1).) Mitigation includes avoiding, minimizing, rectifying, reducing, or compensating for the significant impact. (CEQA Guidelines, § 15370.) In a program EIR, the mitigation measures must be "program-wide mitigation measures" that address the cumulative nature of the Plan's overall impacts at an early time in the CEQA process when an agency has greater flexibility to deal with the impacts. (CEQA Guidelines, § 15168(b)(4).) As discussed above, the Delta Plan Draft Program EIR does not evaluate the overall impacts of the entire Plan. Thus, it does not present any mitigation measures that address overall impacts that might occur if the Plan were implemented. Rather, most of the mitigation measures listed in the Delta Plan Draft Program EIR are merely project-level measures applied to individual future projects. For example in Section 3 – Water Resources, the first mitigation measure calls for very project-specific, best management practices (BMPs) to be developed in the future by local governments approving projects, throughout California. (Delta Plan Draft Program EIR, Sec. 3.4.3.6.1.) These are the types of mitigation measures typically applied to individual projects, not broad policy-oriented programs such as the Delta Plan. Similar project-specific measures are found in every chapter of the program EIR.

This entire approach to mitigation is inadequate because it does not provide any uniformly developed policies or approaches to mitigate the overall impacts of the Delta Plan. Additionally, such measures are generally outside the authority of DSC to adopt and there is no guarantee that the future, unidentified lead agencies will have the power, or inclination to adopt them. Despite this uncertainly about the enforceability and efficacy of future mitigation, many of the conclusions as to the non-significance of impacts are premised on the assumption that these measures "will do the job." Consequently to make the mitigation measures adequate, the Council must revise the Delta Plan Draft Program EIR to include broad, uniform mitigation policies that will address the overall impacts of the Delta Plan.

ii. The Delta Plan Draft Program EIR Improperly Attempts to Require an Agency which Undertakes a Covered Action to Incorporate the Delta Plan Draft Program EIR's Mitigation Measures into its Proposed Project.

The Delta Plan Draft Program EIR states that "agencies undertaking covered actions must incorporate [the mitigation measures identified in the EIR] into their projects or plans in order for any such covered action to be consistent with the Delta Plan." (Delta Plan Draft Program EIR, p. 2B-2.) However, the DSC lacks authority to require other agencies to incorporate specific mitigation measures into their projects. While the Legislature granted the DSC authority to determine whether a covered action is consistent with the Delta Plan, such authority does not include the ability to impose specific mitigation measures on local agencies. As noted in the

Delta Plan Draft Program EIR, "whether the identified mitigation is feasible for any particular project or action proposed by another agency can only be definitively determined at the time that project or action is defined, and would be determined by that agency and *not the Council*." (Delta Plan Draft Program EIR, p. 2B-3, footnote 4, italics added.) Regarding non-covered actions, the Delta Plan Draft Program EIR correctly recognizes that the DSC cannot impose mitigation measures on other agencies. (Delta Plan Draft Program EIR, p. 2B-2; *see also* Water Code, § 85032(f), which does not enlarge the DSC's authority under CEQA.) The DSC should revise the Delta Plan Draft Program EIR to state that the DSC lacks authority to impose project-specific mitigation measures on other agencies for both covered and non-covered actions.

I. The Delta Plan Draft Program EIR's Impact Analysis is Deficient.

i. The Delta Plan Draft Program EIR Fails to Properly Analyze Impacts of the Proposed Project on Areas Outside the Delta.

Every section of the Delta Plan Draft Program EIR states that the analysis focuses on a "study area defined as the geographic area in which the majority of the potential impacts are expected to occur." (e.g., Delta Plan Draft Program EIR, pp. 9-1, 10-1, 11-1.) The Delta Plan Draft Program EIR goes on to make clear that this area of analysis consists of the "Delta and Suisun Marsh." (e.g., Delta Plan Draft Program EIR, pp. 9-1, 10-1, 11-1.) Although the Delta Plan Draft Program EIR claims to also take a general look at other areas, the Delta Plan Draft Program EIR admits that those areas are analyzed "to a lesser extent." (e.g., Delta Plan Draft Program EIR, p. 9-1.) For example, the visual resources and geology section, among other sections, have no analysis for areas outside of the Delta, despite the high likelihood of significant impacts in those areas due to cutting Delta water deliveries, since increased water conservation is a likely result of the Plan, which would likely reduce landscaping and greenery, and subsidence would likely result from increased pumping of groundwater. Other examples include the failure to disclose the special status species in areas outside the Delta that could be impacted by reductions in Delta water deliveries. The repeated admission that the impacts within the Delta region are the ones upon which the Delta Plan Draft Program EIR focuses constitutes a violation of CEQA. Specifically, CEQA case law makes clear that a lead agency has the obligation to analyze all reasonably foreseeable impacts, even if they occur hundreds of miles away. (*See, e.g., County Sanitation District v. Kern County* (2005) 127 Cal.App.4th 1544.) For the DSC to imply that impacts further away from the Delta are somehow less important and thus in less need of analysis or mitigation is improper and seeks to obscure the true impact of the proposed project. The DSC should revise the Delta Plan Draft Program EIR to identify all impacts at the same level of detail, without regard for where they occur.

ii. The Delta Plan Draft Program EIR Improperly Defers the Analysis of Nearly Every Impact.

The Delta Plan Draft Program EIR is premised on the assumption that other agencies will conduct additional CEQA review at a later time and will work out what the proposed project's impacts are and what mitigation is appropriate for those impacts at a future date. This failure to provide any meaningful or detailed analysis of the proposed project's impacts violates CEQA. (*See*, e.g., *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206.) Since the proposed project advocated reducing water supply conveyed through the

Delta, it is incumbent upon the DSC to fully analyze the impacts that would occur as a result of water suppliers having to obtain that water from other sources or the impacts of an absolute reduction in available water supplies. The Delta Plan Draft Program EIR totally fails to do this, instead repeatedly stating that "the implementation and enforcement of these [future actions] would be within the responsibility and jurisdiction of public agencies other than the Delta Stewardship Council." (Delta Plan Draft Program EIR, p. 3-91.) The Delta Plan Draft Program EIR's impermissible deferral of impacts is evident in every section of the Delta Plan Draft Program EIR. Thus, the DSC should revise the Delta Plan Draft Program EIR to provide the full public disclosure and analysis that CEQA requires, or remove the proposed policies that result in these unanalyzed impacts from the Delta Plan itself. (*See*, e.g., Delta Plan Draft Program EIR, pp. 3-85 [water supply impacts may be determined to be significant by other agencies at a future date]; 9-35 [construction impacts would be analyzed by other agencies at a later time]; 9-41 [odors to be analyzed at a later time]; 9-41 [health risks to be analyzed at a later time]; 10-46 [cultural impacts to be determined at a later time].)

iii. The Delta Plan Draft Program EIR Fails to Disclose the Impacts of the Proposed Project or its Alternatives.

The Delta Plan Draft Program EIR repeatedly states that the proposed project's impacts may be mitigated to a level of less than significant or be significant and unavoidable, but that the DSC does not know what the impact will actually be since other agencies will be implementing specific projects. (e.g., Delta Plan Draft Program EIR, p. 9-27.) As one example, the Delta Plan Draft Program EIR states:

> [I]t is possible that air quality impacts of projects encouraged by the Delta Plan may be less than significant, or could be mitigated to a less-than-significant level.... and it is possible that significant and unavoidable impacts on air quality could occur.

(Delta Plan Draft Program EIR, p. 9-27.) This is not an impact analysis, but rather simply a catalog of possible outcomes that does not inform the DSC or the public in any meaningful way. CEQA obligates the DSC, as the lead agency, to analyze the impacts of its proposed project and to obtain the information needed to reach a factually-supported significance conclusion rather than merely speculate as to any number of potential outcomes. (*See*, e.g., CEQA Guidelines, §§ 15083, 15086 [consultation with affected agencies and the public is required to assist in the determination of impacts].) Where, as here, an environmental impact report fails to provide a "meaningful assessment of the true scope of numerous potentially serious adverse environmental effects," courts have struck down the CEQA document as inadequate. (*See, e.g., Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220-21.)

iv. The Delta Plan Draft Program EIR Fails to Consider Significant Indirect Impacts.

a. The Delta Plan Draft Program EIR Fails to Consider Effects of Reduced Water Supplies Conveyed Through the Delta.

With respect to water supply, the Project proposes a decrease in Delta water supplies conveyed through the Delta but nowhere does the Project description provide a public disclosure of how large of a decrease that may be – not even in general terms. This fundamental feature of the Plan must be clearly described in the Project description, especially since it is impossible to understand the likely impacts of the Project on the 96% of Californians who rely on water derived from the Delta watershed (Delta Plan Draft Program EIR, p. 1-5) without knowing how much Delta water deliveries will be reduced. Further, only Alternative 2 discusses how much water deliveries would be reduced if that alternative were selected (*See*, e.g., Delta Plan Draft Program EIR, p. ES-6 [Alternative 2 potentially limits the water of water conveyed through the Delta to 3 million acre-feet per year]; cf. p. 1-6 [annual quantity of CVP and SWP water conveyed through the Delta to 3 to 6.5 million acre-feet per year]), and therefore, other than that alternative, it is impossible to adequately compare the proposed project and the other alternatives, and the discussion of alternatives is inadequate as well.

Further, the Delta Plan Draft Program EIR makes no attempt to assess and analyze the environmental consequences of reducing the quantity of water conveyed through the Delta, such as from the development of alternative water supplies or from the consequences of suffering water shortages. The proposed project, Alternative 2 and Alternative 3 would significantly reduce the quantity of water conveyed through the Delta, yet the Delta Plan Draft Program EIR concludes that the amount of water supplied will remain the same because other agencies will build wells, desalination plants, and recycled water facilities, and will engage in water transfers. The ability to replace the water supply conveyed through the Delta with these other sources is wholly speculative and actually conflicts with the other information disclosed in the Delta Plan Draft Program EIR. For example, groundwater wells will not be an adequate replacement because, as the Delta Plan Draft Program EIR acknowledges, almost all areas that receive water conveyed through the Delta are in a state of overdraft and currently rely heavily on water conveyed through the Delta to prevent the worsening of this overdraft and other environmental impacts, such as subsidence. (*See*, e.g., Delta Plan Draft Program EIR, pp. 2A-16, 3-29 to 3-31, 3-34, 3-37, 3-41, 3-44, 3-56, etc.; other pages fail to disclose the status of the relevant groundwater basins, see p. 3-58.) The Delta Plan Draft Program EIR recognizes this, and that surface water is needed to recharge existing wells, and yet, in direct contradiction, continues to claim that additional groundwater wells will help achieve a more secure water supply for California. In addition, desalination plants take years – often, decades – to plan and develop. (*See* Delta Plan Draft Program EIR, p. 3-49, noting that Marin Municipal Water District has been investigating desalination since the 1990s, with no resulting facilities, p. 3-74, noting that there are enormous obstacles to large-scale desalination, due to difficulties with land acquisition, treatment, operational costs, environmental review and permitting processes involving more than 20 local, state, and federal agencies, and that of all of the proposed desalination plants, only a single one has actually progressed to the construction phase, more than five years after the Delta Plan Draft Program EIR was released [p. 4-61], and will only deliver 56,000 acre-feet once fully completed and operational). Further, depending on their size, which is often limited, they do not

produce very large amounts of water once they are operational. Scientific papers, including one released November 2011 by Fresno State University's Center for Irrigation Technology, acknowledge that even existing amounts of water are insufficient to stave off economic and environmental disaster. This directly contradicts the Delta Plan Draft Program EIR's unsupported conclusion that sufficient, feasible replacement water sources exists.

The Delta Plan Draft Program EIR should analyze how many replacement sources would be required to make up for any loss of water currently conveyed through the Delta and the environmental impacts of the different types of replacement sources. The following are some of the foreseeable impacts that must be addressed in the Delta Plan Draft Program EIR to satisfy CEQA:

- If all the replacement water were supplied by desalination, how many plants would be required?
- How long would it take to design, permit, and build all such plants? Desalination plants have enormous energy requirements, so this will also need to be taken into account?
- If all of the lost water supplies were replaced by groundwater wells, how many wells would be required?
- How much would the additional pumping further depress already overdrafted groundwater basins?
- How much subsidence and other issues would this likely cause?
- How much water is available for transfer, and what areas would it be available for transfer to?
- How many recycled water facilities would have to be built to replace the lost water?
- What would the environmental impacts be of using recycled water in place of likely higher quality water conveyed through the Delta?

In violation of CEQA, these foreseeable impacts that would directly and indirectly result from the proposed project are not disclosed in the Delta Plan Draft Program EIR.

Unlike desalination, wells, and the other sources the Delta Plan Draft Program EIR identifies as sources of replacement water for lost Delta deliveries, which are wholly speculative except in very limited amounts and areas, recycled water facilities are a potential future source of water for some locales. However, Southern California already recycles more than 35% of all of its wastewater, (Delta Plan Draft Program EIR, p. 3-74), many recycled water facilities usually do not produce large amounts of water, and, because of its high salt content, the resulting water cannot be used for the same purposes as the high-quality Delta water that is being taken away. Such recycled water may not be usable for drinking water, but may be limited in use to irrigation

where purple pipes or other, similar infrastructure is available, or for groundwater recharge. However, even these uses are threatened in some areas if there is not adequate amounts of Delta water for blending since water with high salt content, such as recycled water, groundwater from many areas, and Colorado River water, needs to be blended with high quality water (which is almost always Delta water) in order to be usable in any form. (*See* Delta Plan Draft Program EIR, p. 3-63.) Recycled water, Colorado River water, and groundwater in many areas cannot be used for recharge in many areas because it is too high in salts without blending with high quality Delta water. None of these issues are disclosed or analyzed in the Delta Plan Draft Program EIR, in violation of CEQA. While the Delta Plan Draft Program EIR states that (unidentified) Urban Water Management Plans describe the existing use of recycled water and identify the potential for increased use by 2020, there is no incorporation by reference of these documents or analysis of their contents, so the feasibility or amount of these is unknown. In addition, the Delta Plan Draft Program EIR admits that the State Water Board mandates the increased use of recycled wastewater by 200,000 acre-feet per year by 2020 (Delta Plan Draft Program EIR, p. 2A-21), so such increase would not be as a result of the proposed project, but would properly be part of the baseline or No Project alternative.

This failure to disclose the full and actual impacts of the Project is also tantamount to piecemealing the project, i.e., avoiding the analyses of the Delta Plan as a whole. Where the project description omits key aspects of the project, such as in this example the reduction in the quantity of water conveyed through the Delta, important ramifications of the proposed project remain hidden from view at the time the project is being discussed and approved.

b. <u>The Delta Plan Draft Program EIR Fails to Consider Effects of Possible Changes From State Water Board Action.</u>

The proposed project pressures the State Water Board to take action that would increase the amount of flow into and out of the Delta. In the Delta Plan Draft Program EIR, the DSC advocates for "a more natural flow regime in the Delta." (Delta Plan Draft Program EIR, p. 2A-39.) There are potential significant impacts of this aspect of the proposed project that are not analyzed in the Delta Plan Draft Program EIR, including on the following resources: Biological, Agriculture and Forestry, Climate Change, and Green House Gases. Expected impacts would include, but are not limited to: (1) reduced reservoir storage and thus limited cold water for temperature requirements for salmon downstream; (2) reduced previously stored and un-appropriate water to meet terms and conditions in water rights and other regulatory requirements (i.e., Biological Opinions); (3) reduced water supply for municipal, industrial, and agricultural uses, and likely causing land fallowing, increased land subsidence, increased dust emissions; (4) reduced water supply for environmental purposes (in-stream needs in areas otherwise served water from the Delta, refuges); (5) reduced hydropower generation; (6) instability in California's energy grid caused by reduced summertime hydropower production; and (7) increased reliance on fossil fuel production due to a loss of hydroelectric generation, and resulting air quality impacts. Some of those impacts are identified in a "Water and Power Policy Group" paper entitled: "Hydrologic Modeling Results and Estimated Potential Hydropower Effects Due to the Implementation of the Sacramento Water Resources Control Board Delta Flow Criteria."

v. The Delta Plan Draft Program EIR's Analysis regarding Water Resources is Insufficient.

The Delta Plan Draft Program EIR does not analyze the water supply impacts to the CVP and SWP. While the Delta Plan Draft Program EIR states the raw numbers of water conveyed through the Delta from 2007 through 2009, it does not disclose how the quantity of water varied over time (i.e., water year type), or how the quantity has been impacted by the relevant biological opinions and other restrictions. The Delta Plan Draft Program EIR also fails to disclose or analyze the environmental impacts resulting from changes in CVP and SWP water supplies.

Regarding Southern California, the Delta Plan Draft Program EIR notes that existing water supplies are fully used, further groundwater development is limited due to declining and poor quality groundwater, and existing reductions are already challenging the area's ability to meet its water needs. (Delta Plan Draft Program EIR, pp. 3-69 to 3-70.) Similar statements can be made for water use within the San Joaquin Valley and Silicon Valley. Despite this, the Delta Plan Draft Program EIR simply assumes that Delta water deliveries can be decreased under the Delta Plan and unidentified new wells, desalination, water storage, recycled water, and transfers can easily make up this loss of water, without any disclosure or analysis of how this would be possible. Assertions in the Delta Plan Draft Program EIR without support do not constitute substantial evidence.

The Delta Plan Draft Program EIR contains no conclusion of significance for Impact 3-3a, the fact that it will "Substantially Change Water Supply Availability to Water Users That Use Delta Water." The two-sentence discussion of this (Delta Plan Draft Program EIR, p. 3-82) is inadequate because it does not disclose how much Delta water will be cut, and merely assumes the feasibility of the replacement of such water, despite the fact that the Delta Plan Draft Program EIR elsewhere notes the lack of groundwater, near impossibility of constructing new dams or desalination plants, and other problems that will prevent the development of new water sources.

The Delta Plan Draft Program EIR's discussion of the availability of Colorado River water supplies and the Quantification Settlement Agreement (QSA) (Delta Plan Draft Program EIR, p. 3-69) is also deficient, as it does not describe where or how such supplies are used or acknowledge that the QSA and related agreements are currently in litigation. The Delta Plan Draft Program EIR should recognize this, and disclose the uncertainty and possible loss of Colorado River water deliveries to certain areas, such as San Diego which relies overwhelmingly on Colorado River and SWP deliveries, further reducing the existing available water supply in those areas.

vi. The Delta Plan Draft Program EIR's Analysis of Air Quality Impacts is Insufficient.

Although the Delta Plan Draft Program EIR states that any quantification of air quality impacts would be too speculative to provide in the Delta Plan Draft Program EIR (Delta Plan Draft Program EIR, p. 9-18), the Delta Plan Draft Program EIR fails even to provide an adequate qualitative discussion of impacts. It does not provide the thresholds of significance that are used in air basins and fails to give a potential magnitude of impacts as a result of the proposed project.

Further, the Delta Plan Draft Program EIR provides no analysis of the types of impacts that might occur within each air basin, instead providing just a couple of paragraphs of general discussion to describe significant impacts that might occur state-wide. For example, is the Central Air Basin at more risk for particulate emissions as a result of the potential fallowing of thousands of acres of agricultural lands due to the proposed project's reductions in supplies of water conveyed through the Delta? Would the San Diego Air Basin experience a proportionally greater impact than other air basins due to the fact that the bulk of the water supply in that area is conveyed through the Delta – and thus a proportionally large amount of replacement facilities would have to be built to replace that water? Are certain air basins (i.e., coastal basins) more likely than others to bear the impacts of desalination plants? The DSC should significantly expand its discussion to actually analyze on a basin-by-basin level what impacts are likely to result.

Furthermore, the Delta Plan Draft Program EIR provides no real discussion of sensitive receptors or what specific pollutants those receptors may be exposed to. Although the Delta Plan Draft Program EIR states that impacts to sensitive receptors may be significant (or insignificant), the Delta Plan Draft Program EIR does not clarify what those actual impacts are. The Delta Plan Draft Program EIR should disclose which criteria pollutants, hazardous materials, and/or toxic substances may result from the proposed project's implementation at the local level and, further, to disclose what medical conditions (asthma, cancer, lung development problems, etc.) may result from those emissions. It is not enough to merely state that significant impacts may result – the DSC must describe the connection between the potentially significant emissions and the actual health risks that may occur. (*See Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219 [EIR struck down where it "failed to correlate the identified adverse air quality impacts to resultant adverse health effects"].) Further, the Delta Plan Draft Program EIR should identify whether certain communities or schools are at more risk than others for being exposed to such pollutants based on those communities proportionate need for replacement water facilities.

vii. The Delta Plan Draft Program EIR's Analysis of Greenhouse Gases (GHG) is Insufficient.

The Delta Plan Draft Program EIR states that any quantification of greenhouse gases (GHG) emissions would be too speculative because of the DSC's uncertainty in terms of what would be built. (Delta Plan Draft Program EIR, p. 21-11.) Yet, again, the Delta Plan Draft Program EIR fails even to provide an adequate qualitative discussion of impacts. As examples, the Delta Plan Draft Program EIR fails to discuss how the fallowing of thousands of acres of agricultural lands (lands which previously grew crops or trees which remove CO2 from the air) would contribute to climate change. Similarly, the Delta Plan Draft Program EIR mentions the possibility of the construction and operation of desalination or water reclamation plants as potential sources of replacement drinking water, yet the Delta Plan Draft Program EIR fails to discuss the fact that both of these require massive amounts of electricity to process and treat water – electricity generation being one of the primary ways that GHGs are generated. As yet another issue, if the proposed project is going to generate mass quantities of GHGs through the construction and operation of replacement water supply facilities, those GHG emissions will worsen the already existing global warming phenomenon. The Delta Plan Draft Program EIR does not mention this fact and does not analyze the true on-the-ground impacts of that worsened

climate change condition. The DSC should revise the Delta Plan Draft Program EIR to provide a much more detailed discussion of climate changes around the state, including discussing what impacts certain communities may see (i.e., the impacts of global warming are different depending on whether one lives in a coastal community, the Delta area, the central valley, or the mountains).

viii. The Delta Plan Draft Program EIR's Analysis of Biological Resources is Insufficient.

The Delta Plan Draft Program EIR ignores or downplays major historical changes to the system. In particular, the extraordinary increase in the cross section and volume of the Sacramento River from the confluence up to Rio Vista. The San Joaquin River has also been engineered to be deeper than it was historically. The effect of these changes has been to significantly alter the salinity/flow relationships. Much more water is needed now to achieve the same salinities as before development. Additionally, suspended sediments are lower in recent years. However, the decline in Suisun Bay turbidity in the summer and fall should largely be attributed to reductions in phytoplankton densities, resulting from the invasion of the clam corbula and increased nitrogen: phosphorus ratios. The best available science suggests that food, predators, and temperature have driven delta smelt populations. (*See* Maunder, Mark and Deriso, Richard, Can. J. Fish. Aquat. Sci. Vol. 68, 2011. 1295 – 1306.) The Delta Plan Draft Program EIR should include this information rather than relying upon speculation.

J. The Structure and Format of the Delta Plan Draft Program EIR Do Not Allow for Informed Public Review and Decision Making.

The fundamental purpose of an environmental impact report is to inform the public and agency decision-makers of the potentially significant environmental effects of a project, to identify ways to minimize those effects, and to describe reasonable alternatives the proposed project. (CEQA Guidelines, §15121.) A well-organized and readable environmental impact report is essential to achieving these fundamental purposes. The Supreme Court has held that an environmental impact report must be readily understandable by the public and agency decision-makers. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.) To help achieve these purposes and to reduce paperwork and delay, CEQA further suggests that agencies eliminate repetitive discussions of the same issue in an environmental impact report by using environmental impact report on programs, policies, or plans and tiering from report of broad scope to that of a narrower scope. (CEQA Guidelines, §§ 15006(m) & 15152.)

The Delta Plan Draft Program EIR includes extensive repetitive discussions of the same impacts for different aspects of the proposed project which results in the inclusion of hundreds of unnecessary pages. Under each topical section of the Delta Plan Draft Program EIR (e.g., biology, air quality, noise, etc.), there are separate discussions of components of the proposed project (e.g. Reliable Water Supply, Delta Ecosystem Restoration, Water Quality Improvement, Flood Risk Reduction, Protection and Enhancement of Delta as an Evolving Place) and the likely types of projects that could potentially occur under each. Generally, this might be an acceptable approach to evaluating the impacts of a plan. However, in this case, the discussion under each of these topics is virtually the same. The extreme redundancy within the document means that the

public and decision-makers have to read and digest hundreds of unnecessary pages, just to reach the same, repetitive conclusions. This greatly diminishes the usefulness of the Delta Plan Draft Program EIR to the public and decision-makers.

However, Section 13 on Mineral Resources takes a different approach in which components are lumped into single discussions under each topical resource. This section is far easier to read and understand with apparently little or no loss of substance. The entire Delta Plan Draft Program EIR should be re-written using this approach to make the document less redundant.

Additionally, the Delta Plan Draft Program EIR relies excessively on lists of cross-references to various aspects of the proposed project and to other sections of the Delta Plan Draft Program EIR. One of many such examples is found on page 2A.5, line 23 of the Delta Plan Draft Program EIR. This approach of using excessive cross references requires the reader to constantly jump back and forth from place to place, diminishing the Delta Plan Draft Program EIR's usefulness. Instead, the document should provide summaries of the key policies that are relevant to the discussion.

Finally, the Delta Plan Draft Program EIR includes a massive amount of unnecessary background information which makes the document difficult to read and which is never used in the discussion of the Plan's impacts. CEQA provides that agencies should reduce delay and paperwork in preparing EIRs. Specifically, the CEQA Guidelines state that EIRs should be analytic rather than encyclopedic and that documents should mention only briefly issues other than significant ones. (CEQA Guidelines, §§ 15006(o)-(p) & 15143.) The CEQA Guidelines also provide that the description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. (CEQA Guidelines, § 15125(a).)

Notwithstanding these admonitions, the Delta Plan Draft Program EIR contains extensive and repetitive discussions of unnecessary background information. In several chapters, the extent of the environmental setting information far exceeds that necessary to discuss the environmental impacts. For example in Section 17 – Public Services, more than half the material consists of a description of the environmental setting even though there are no significant impacts expected on any those resources. This unfocused, encyclopedic approach to the EIR, along with the numerous substantive problems identified above, overwhelms the reader with unnecessary information and contributes to the document's lack of value as a public disclosure and decision-oriented document.

The inadequate overall structure and format of the Delta Plan Draft Program EIR, as well

as the extensive redundancy of discussions precludes meaningful public review and makes the document essentially useless as an informational decision-oriented tool.

Thank you again for the opportunity to submit these comments.

Sincerely,

Daniel G. Nelson
Executive Director
San Luis & Delta-Mendota Water Authority

Terry L. Erlewine
General Manager
State Water Contractors

Attachment

Attachment 1

The San Luis & Delta-Mendota Water Authority

The San Luis & Delta-Mendota Water Authority is a joint powers authority formed pursuant to California Government Code section 6500 et seq. The Authority consists of 29 member public agencies, 27 of which contract with Reclamation for water supply from the federal Central Valley Project for distribution and use within areas of San Joaquin, Stanislaus, Merced, Fresno, Kings, San Benito, and Santa Clara Counties, California. Collectively, the member agencies of the Authority deliver water to more than 1 million residents and more than 2,000,000 acres of agricultural lands. The Authority's member agencies are: Banta-Carbona Irrigation District; Broadview Water District; Byron Bethany Irrigation District (CVPSA); Central California Irrigation District; City of Tracy; Columbia Canal Company (a Friend); Del Puerto Water District; Eagle Field Water District; Firebaugh Canal Water District; Fresno Slough Water District; Grassland Water District; Henry Miller Reclamation District #2131; James Irrigation District; Laguna Water District; Mercy Springs Water District; Oro Loma Water District; Pacheco Water District; Pajaro Valley Water Management Agency; Panoche Water District; Patterson Irrigation District; Pleasant Valley Water District; Reclamation District 1606; San Benito County Water District; San Luis Water District; Santa Clara Valley Water District; Tranquillity Irrigation District; Turner Island Water District; West Side Irrigation District; West Stanislaus Irrigation District; Westlands Water District.

State Water Contractors, Inc.

The State Water Contractors, Inc. is a non-profit association of 27 public agencies from Northern, Central and Southern California that purchase water under contract from the California State Water Project. Collectively, the member agencies of the SWC deliver water to more than 25 million residents throughout the state and more than 750,000 acres of agricultural lands. The SWC's member agencies are: Alameda County Flood Control and Water Conservation District Zone 7; Alameda County Water District; Antelope Valley-East Kern Water Agency; Casitas Municipal Water District; Castaic Lake Water Agency; Central Coastal Water Authority; City of Yuba City; Coachella Valley Water District; County of Kings; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Empire-West Side Irrigation District; Kern County Water Agency; Littlerock Creek Irrigation District; Metropolitan Water District of Southern California; Mojave Water Agency; Napa County Flood Control and Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Gorgonio Pass Water Agency; San Luis Obispo County Flood Control & Water Conservation District; Santa Clara Valley Water District; Solano County Water Agency; Tulare Lake Basin Water Storage District.

TCCA
Tehama Colusa Canal Authority

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- News and Press Releases
- Photo Gallery
- Map
- Staff and Directors
- Board Meeting Agendas and Minutes
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Mission Statement

The mission of the Tehama-Colusa Canal Authority is to secure, protect and develop dependable and affordable sources of water, and to operate, maintain and deliver the works essential to deliver such water.

"Who We Are"

The Tehama-Colusa Canal Authority (TCCA) is a Joint Powers Authority comprised of 17 Central Valley Project water contractors. The service area spans four counties (Tehama, Glenn, Colusa, and Yolo) along the west side of the Sacramento Valley, providing irrigation water to farmers growing a variety of permanent and annual crops. TCCA operates and maintains the 140 mile Tehama-Colusa and Corning canals irrigation water supply system. The service area is approximately 150,000 acres, producing over $250 million in crops per year, and contributing $1 billion to the regional economy annually.

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Conversation Contents

ACWC Speaking Engagement

Edward McDonnell <edward.mcdonnell@sol.doi.gov>

From:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Apr 30 2018 15:41:16 GMT-0600 (MDT)
To:	(b) (6) t@ios.doi.gov
BCC:	margaret.connors@sol.doi.gov
Subject:	ACWC Speaking Engagement

Hi David,

We've signed the ethics section of the DI-2000 for your trip.

Please remember that OGE recommends that speakers not discuss any party matters (litigation, permits, leases, agreements, contracts, etc.) in these public speaking engagements to avoid inadvertently violating the impartiality reg (5 CFR 2635.502) or the pledge. This is especially true if former employers or clients under the pledge are present because of the pledge's restrictive discussion prohibition (b) (5)

Please let me know if you would care to discuss.

Thanks very much,
Ed

Sent from my iPhone

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

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David Bernhardt <(b) (6) t@ios.doi.gov>

From:	David Bernhard (b) (6) @ios.doi.gov>
Sent:	Mon Apr 30 2018 16:31:32 GMT-0600 (MDT)
To:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Re: ACWC Speaking Engagement

Thanks Ed. I have no idea if Westlands will be there or not.

Sent from my iPhone

On Apr 30, 2018, at 5:41 PM, Edward McDonnell <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> We've signed the ethics section of the DI-2000 for your trip.
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> Please remember that OGE recommends that speakers not discuss any party matters (litigation, permits, leases, agreements, contracts, etc.) in these public speaking engagements to avoid inadvertently violating the impartiality reg (5 CFR 2635.502) or the pledge. This is especially true if former employers or clients under the pledge are present because of the pledge's restrictive discussion prohibition (b) (5)

(b) (5) [redacted]

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Edward McDonnell <edward.mcdonnell@sol.doi.gov>

From:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Apr 30 2018 19:59:44 GMT-0600 (MDT)
To:	David Bernhard (b) (6) @ios.doi.gov>
Subject:	Re: ACWC Speaking Engagement

Thanks, David.

Sent from my iPhone

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On Apr 30, 2018, at 6:31 PM, David Bernhardt <(b) (6) @ios.doi.gov> wrote:

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> > *- Stewardship for America with Integrity and Excellence -*
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into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Ce(b) (6)

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 7346
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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Label: "SOL FOIA 2018 - 00129"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:08 AM

Conversation Contents

Fwd: [EXTERNAL] Invite

Attachments:

/17. Fwd: [EXTERNAL] Invite/1.1 061818 A1AAC LxL.PDF

"Bernhardt, David" (b) (6) ios.doi.gov>

From:	"Bernhardt, David" (b) (6) t@ios.doi.gov>
Sent:	Wed Jun 13 2018 14:46:01 GMT-0600 (MDT)
To:	Scott de la Vega <scott.delavega@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Fwd: [EXTERNAL] Invite
Attachments:	061818 A1AAC LxL.PDF

Scott and Ed: I have never been asked to participate in a political event before. Given the Secretary's absence, I am willing to attend this event on my own personal time, however, I want to ensure I act according to whatever the rules are we have, so can one of you evaluate this and let me know what I need to do to ensure I stay within the proper confines.

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Wed Jun 13 2018 15:17:29 GMT-0600 (MDT)
To:	"Bernhardt, David (b) (6) t@ios.doi.gov>
CC:	Scott de la Vega <scott.delavega@sol.doi.gov>
Subject:	Re: [EXTERNAL] Invite

Hi David,

Scott and I just had a preliminary discussion on this and we will get back to you with our guidance tomorrow.

Thanks very much,
Ed

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U.S. Department of the Interior

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On Wed, Jun 13, 2018 at 4:46 PM, Bernhardt, Davi (b) (6) @ios.doi.gov> wrote:

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"de la Vega, Scott" <scott.delavega@sol.doi.gov>

From: "de la Vega, Scott" <scott.delavega@sol.doi.gov>
Sent: Thu Jun 14 2018 08:22:32 GMT-0600 (MDT)

To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>, Heather Gottry <heather.gottry@sol.doi.gov>
Subject:	Fwd: [EXTERNAL] Invite

Ed - apologies, I forgot to copy you on my response to Dep Sec.

---------- Forwarded message ----------
From: **de la Vega, Scott** <scott.delavega@sol.doi.gov>
Date: Thu, Jun 14, 2018 at 10:20 AM
Subject: Re: [EXTERNAL] Invite
To: David Bernhardt <(b) (6) ios.doi.gov>

Deputy Secretary Bernhardt -

There is no legal objection to your attendance and participation, in your solely personal capacity, in the America First Action Superpac Leadership Summit and its Energy Roundtable on June 19, 2018, subject to the below guidelines.

Personal Capacity Participation - As you have informed us, you would be attending this political event in your personal, not official, capacity. Employees may actively participate in their personal capacities in partisan political activities such as attendance at a superpac fundraiser or "leadership summit." Pursuant to the Hatch Act Reform Amendments of 1993, such participation may include acceptance of meals, transportation, and free attendance at events, for the employee and an accompanying spouse or other guests, when provided in connection with such participation, by a political organization described in 26 U.S.C. 527(e). 5 U.S.C. 7323. The America First PAC is such an organization.

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(b) (5)

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Nonpublic Information - You may not discuss at this event any nonpublic information gained by reason of your Federal employment that you know or reasonably should know has not been made available to the general public. 5 C.F.R. 2635.703.

Thank you for consulting with the Departmental Ethics Office regarding attendance at this event.

Scott A. de la Vega
Director, Departmental Ethics Office
& Designated Agency Ethics Official
U.S. Department of the Interior
(O) (202) 208-3038
(C [redacted]
scott.delavega@sol.doi.gov
Visit us online at: www.doi.gov/ethics

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On Wed, Jun 13, 2018 at 4:46 PM, Bernhardt, David <dwbernhardt@ios.doi.gov> wrote:

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Thu Jun 14 2018 08:46:17 GMT-0600 (MDT)
To:	"de la Vega, Scott" <scott.delavega@sol.doi.gov>
Subject:	Re: [EXTERNAL] Invite

Thanks very much, Scott!

- Stewardship for America with Integrity and Excellence -

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On Thu, Jun 14, 2018 at 10:22 AM, de la Vega, Scott <scott.delavega@sol.doi.gov> wrote:

> Ed - apologies, I forgot to copy you on my response to Dep Sec.
>
> ---------- Forwarded message ----------
> From: **de la Vega, Scott** <scott.delavega@sol.doi.gov>
> Date: Thu, Jun 14, 2018 at 10:20 AM
> Subject: Re: [EXTERNAL] Invite
> To: David Bernhard (b) (6) [redacted]@ios.doi.gov>

Deputy Secretary Bernhardt -

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Scott A. de la Vega
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& Designated Agency Ethics Official
U.S. Department of the Interior
(O) (202) 208-3038
(C (b) (6)
scott.delavega@sol.doi.gov
Visit us online at: www.doi.gov/ethics

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On Wed, Jun 13, 2018 at 4:46 PM, Bernhardt, David (b) (6) @ios.doi.gov> wrote:

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Thu Jun 14 2018 08:48:26 GMT-0600 (MDT)
To:	"Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>, Matthew Parsons <matthew.parsons@sol.doi.gov>
Subject:	Fwd: [EXTERNAL] Invite

Hatch Act guidance from Scott

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---------- Forwarded message ----------
From: **de la Vega, Scott** <scott.delavega@sol.doi.gov>
Date: Thu, Jun 14, 2018 at 10:22 AM
Subject: Fwd: [EXTERNAL] Invite
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>, Heather Gottry <heather.gottry@sol.doi.gov>

Ed - apologies, I forgot to copy you on my response to Dep Sec.

---------- Forwarded message ----------
From: **de la Vega, Scott** <scott.delavega@sol.doi.gov>
Date: Thu, Jun 14, 2018 at 10:20 AM
Subject: Re: [EXTERNAL] Invite
To: David Bernhard (b) (6) t@ios.doi.gov>

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(O) (202) 208-3038
(C) (b) (6) [redacted]
scott.delavega@sol.doi.gov
Visit us online at: www.doi.gov/ethics

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On Wed, Jun 13, 2018 at 4:46 PM, Bernhardt, David [redacted]@ios.doi.gov> wrote:

> Scott and Ed: I have never been asked to participate in a political event before. Given the Secretary's absence, I am willing to attend this event on my own personal time, however, I want to ensure I act according to whatever the rules are we have, so can one of you evaluate this and let me know what I need to do to ensure I stay within the proper confines.

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(C) [redacted]
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Label: "SOL FOIA 2018 - 00129"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:07 AM

Conversation Contents

Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

Attachments:

/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/1.1 image001.jpg
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/1.2 API Meeting Proposal Information Form Deputy Secretary.pdf
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/1.3 Financial Assurance Summary API April 2018.pdf
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/2.1 image001.jpg
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/3.1 image001.jpg
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/4.1 image001.jpg
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/5.1 image001.jpg
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/6.1 image001.jpg
/12. Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC/7.1 image001.jpg

"Rees, Gareth" <gareth_rees@ios.doi.gov>

From:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
Sent:	Tue May 29 2018 11:31:02 GMT-0600 (MDT)
To:	Margaret Connors <margaret.connors@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
Attachments:	image001.jpg API Meeting Proposal Information Form Deputy Secretary.pdf Financial Assurance Summary API April 2018.pdf

David is likely to say yes to do this so wanted to get down to you asap. Thanks

---------- Forwarded message ----------
From: **Erik Milito** <militoe@api.org>
Date: Tue, May 29, 2018 at 1:11 PM
Subject: RE: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
To: "Rees, Gareth" <gareth_rees@ios.doi.gov>

Gareth,

Please attached for the form, and an additional document that I reference in the form itself.

Thanks.

Erik

From: Rees, Gareth <gareth_rees@ios.doi.gov>
Sent: Tuesday, May 29, 2018 11:14 AM
To: Erik Milito <militoe@api.org>
Subject: Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

Hi Erik

Thank you for the request. Would you be able to complete the attached form. Once I have received the completed form, I will run it through Ethics and get back to you.

thanks

Gareth

On Thu, May 24, 2018 at 3:15 PM, Erik Milito <militoe@api.org> wrote:

> Gareth,
>
> API's Upstream Committee will be in DC on July 17th and it would be great if Mr. Bernhardt could join us as a guest speaker. The committee is comprised of executives from the companies listed in the attachment, and the committee is responsible for overseeing U.S. exploration and production policy efforts. The meeting will be from 8:00 am until 2:00 pm at API headquarters, located at 1220 L Street NW. We could accommodate Mr. Bernhardt during whatever time block is best for him. Our guest speakers from Interior normally give a 20-25 minute presentation and then we leave 20-25 minutes for question and answer.
>
> Please let me know if this can be arranged.

Thank you.

Best regards,

Erik

Erik Milito

Group Director, Upstream & Industry Operations

American Petroleum Institute

1220 L Street, NW

Washington, DC 20005

Ph: (202) 682-8273

Fx: (202) 682-8426

militoe@api.org



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--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Ce (b) (6)

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

(b) (6) [redacted]

"Rees, Gareth" <gareth_rees@ios.doi.gov>

From:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
Sent:	Wed May 30 2018 07:12:16 GMT-0600 (MDT)
To:	Margaret Connors <margaret.connors@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
Attachments:	image001.jpg

Just confirmed that David would like to speak at this if cleared by Ethics. David talk about big picture issues and no party specific issues. Let me know what further information you need. Thanks

On Tue, May 29, 2018 at 1:31 PM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> David is likely to say yes to do this so wanted to get down to you asap. Thanks
>
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Washington, DC 20005

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Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Ce (b) (6) [redacted]

--

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Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

(b) (6) [redacted]

"Connors, Margaret" <margaret.connors@sol.doi.gov>

From:	"Connors, Margaret" <margaret.connors@sol.doi.gov>
Sent:	Wed May 30 2018 11:08:50 GMT-0600 (MDT)
To:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
Attachments:	image001.jpg

Ed:

(b) (5)

[redacted]

Markee

On Wed, May 30, 2018 at 9:42 AM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:

> Is it a lunch, meeting with coffee & pastries? If so, we may need to document this. Will others be present? How many?
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> > > > > From: **Erik Milito** <militoe@api.org>
> > > > > Date: Tue, May 29, 2018 at 1:11 PM
> > > > > Subject: RE: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
> > > > > To: "Rees, Gareth" <gareth_rees@ios.doi.gov>
> > > > >
> > > > > Gareth,
> > > > >
> > > > > Please attached for the form, and an additional document that I reference in the form itself.
> > > > >
> > > > > Thanks.

Erik

From: Rees, Gareth <gareth_rees@ios.doi.gov>
Sent: Tuesday, May 29, 2018 11:14 AM
To: Erik Milito <militoe@api.org>
Subject: Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

Hi Erik

Thank you for the request. Would you be able to complete the attached form. Once I have received the completed form, I will run it through Ethics and get back to you.

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On Thu, May 24, 2018 at 3:15 PM, Erik Milito <militoe@api.org> wrote:

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>
> Thank you.
>
> Best regards,

Erik

Erik Milito

Group Director, Upstream & Industry Operations

American Petroleum Institute

1220 L Street, NW

Washington, DC 20005

Ph: (202) 682-8273

Fx: (202) 682-8426

militoe@api.org



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Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Ce (b) (6) [redacted]

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Ce (b) (6)

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Cell (b) (6)

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Margaret "Markee" S. Connors
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1849 C Street, NW
Room 5311
Washington, DC 20240
Phone: 202-513-0325

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Phone: 202-513-0325

"Gottry, Heather" <heather.gottry@sol.doi.gov>

From:	"Gottry, Heather" <heather.gottry@sol.doi.gov>
Sent:	Fri Jun 01 2018 08:01:18 GMT-0600 (MDT)
To:	"Connors, Margaret" <margaret.connors@sol.doi.gov>
CC:	Scott De La Vega <scott.delavega@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
Attachments:	image001.jpg

Markee - Thanks for sending this sample message on our review of meeting requests for the Deputy Secretary. Below please find some sample language that can be used as a template for when a meeting request appears to involve a specific contract, litigation, lease, permit, application, etc. I will bring down the meeting request from the City of Santa Clarita shortly so you can send out the response. Please note that the first sample message below is based on my understanding from you that none of the parties involved in the meeting requested by the City of Santa Clarita are on DB's recusal lists. The second is drafted in case there are parties involved in

the meeting requested by the City of Santa Clarita that also are on DB's recusal lists Please let me know if it would be helpful to discuss or if I can be of further assistance. Thanks!

- Heather

(b) (5)



On Thu, May 31, 2018 at 5:01 PM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:

> FYI
>
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> ---------- Forwarded message ----------
> From: **Connors, Margaret** <margaret.connors@sol.doi.gov>
> Date: Thu, May 31, 2018 at 4:03 PM
> Subject: Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
> To: Gareth Rees <gareth_rees@ios.doi.gov>
>
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> After reviewing the meeting request for DB to address Upstream Members at API and after reviewing the meeting participant list, both Nobel Energy and Halliburton appeal on DB's recusal letters. Accordingly, DB is recused from discussing particular matters involving specific parties in which Halliburton is a party or represents a party (5 CFR 2635.502). Further and according to the Ethics Pledge, DB is prohibited from participation in any meeting or communication with (Nobel Energy or Halliburton) unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.
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Tel: 202-208-6291

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Ce (b) (6) [redacted]

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Heather Gottry
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(O) (202) 208-4472
(C) (b) (6)
heather.gottry@sol.doi.gov
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Please accept my apologies! In copying text, the message above was sent too soon. Here is the second sample.

(b) (5)

[redacted]

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Ce (b) (6)

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Cel (b) (6) [redacted]

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"Rees, Gareth" <gareth_rees@ios.doi.gov>

From:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
Sent:	Fri Jul 13 2018 14:30:48 GMT-0600 (MDT)
To:	"Connors, Margaret" <margaret.connors@sol.doi.gov>
CC:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
Attachments:	image001.jpg

Hi,

Just wanted to quickly follow-up on this to confirm that it is okay for David to speak at this event on Tuesday.

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> > > > > From: **Erik Milito** <militoe@api.org>
> > > > > Date: Tue, May 29, 2018 at 1:11 PM
> > > > > Subject: RE: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
> > > > > To: "Rees, Gareth" <gareth_rees@ios.doi.gov>

Gareth,

Please attached for the form, and an additional document that I reference in the form itself.

Thanks.

Erik

From: Rees, Gareth <gareth_rees@ios.doi.gov>
Sent: Tuesday, May 29, 2018 11:14 AM
To: Erik Milito <militoe@api.org>
Subject: Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

Hi Erik

Thank you for the request. Would you be able to complete the attached form. Once I have received the completed form, I will run it through Ethics and get back to you.

thanks

Gareth

On Thu, May 24, 2018 at 3:15 PM, Erik Milito <militoe@api.org> wrote:

> Gareth,
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presentation and then we leave 20-25 minutes for question and answer.

Please let me know if this can be arranged.

Thank you.

Best regards,

Erik

Erik Milito

Group Director, Upstream & Industry Operations

American Petroleum Institute

1220 L Street, NW

Washington, DC 20005

Ph: (202) 682-8273

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This transmission contains information that is privileged and confidential and is intended solely for use of the individual(s) listed above. If you received the communication in error, please notify me immediately. Any dissemination or copying of this communication by anyone other than the individual(s) listed above is prohibited.

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Sat Jul 14 2018 13:15:32 GMT-0600 (MDT)
To:	"Rees, Gareth" <gareth_rees@ios.doi.gov>
CC:	"Connors, Margaret" <margaret.connors@sol.doi.gov>, "Bernhardt, David" <dwbernhardt@ios.doi.gov>
Subject:	Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
Attachments:	image001.jpg

Hi Gareth,

After reviewing the invitation sent by the API to the Deputy Secretary to speak at the API Upstream Committee meeting on July 17, 2018 in Washington, DC, we have determined that there is no legal objection to Deputy Secretary Bernhardt's acceptance, on behalf of the Department of the Interior (DOI), of this invitation. It is our understanding that **his attendance will be in his official capacity** and that he will be making official remarks and presenting information on behalf of DOI and the U.S. Government at this event. We further understand that employees of approximately 30 separate organizations are expected to attend the meeting and that at least two of the expected attendees (1) are the Deputy Secretary's former clients under the administration ethics pledge and (2) have a covered relationship with the Deputy Secretary under 5 CFR 2635.502.

Official Capacity Speech – The Deputy Secretary has reasonably determined that attendance at the API Upstream Committee meeting is part of his official duties and is an appropriate forum to present information on behalf of the DOI and the Government. The meeting will be from 8:00 am to 2:00 pm at API headquarters. The Deputy Secretary is expected to provide a 20-25 minute presentation to be followed by a 20-25 minute question and answer period. We understand that the Deputy Secretary's formal remarks as a speaker at the meeting will focus on matters related to the Department's mission, including the Outer Continental Shelf Financial Assurance Program. The Deputy Secretary will also have the opportunity to communicate with various attendees at the event about the mission of the DOI and to present information on behalf of the Administration relating to the President's policy goals and priorities.

Since the Deputy Secretary's attendance at this event will be in his official capacity, he may accept any meal,

refreshments, entertainment, instruction, or materials furnished to all attendees as an integral part of the meeting on July 17, 2018. 5 C.F.R. 2635.203(b)(8). Additionally, any Department staff whose presence at the meeting is essential to the Deputy Secretary's participation and presentation of official remarks may also accept free attendance at the event pursuant to 5 C.F.R. 2635.203(b)(8)(ii).

Please note the following guidelines for the Deputy Secretary speaking/presenting information in an official capacity:

1. **Ethics Pledge and 5 CFR 2635.502** - To avoid potential violation of the administration ethics pledge and 5 CFR 2635.502, the Deputy Secretary must not participate in the discussion of any particular matter involving a specific party or parties during his presentation or at any other time during the event.
2. **Official Title** – Use of his official title is permitted as the Deputy Secretary will be attending and presenting in his official capacity. 5 C.F.R. 2635.702.
3. **Endorsement** – We remind the Deputy Secretary that he may not use his official Government position or title or any authority associated with his public office to endorse any product, service, or enterprise, including non-profit and charitable organizations that may have some affiliation with DOI. 5 C.F.R. 2635.702(c).
4. **Nonpublic Information** – The Deputy Secretary may not discuss at this event any nonpublic information he has gained by reason of his Federal position. 5 C.F.R. 2635.703.
5. **No Partisan Political Activity** – While the Deputy Secretary may discuss the Administration's policy priorities and ideological approach to proposed laws and regulations (especially in regard to DOI-related issues), he must strictly avoid partisan political activity in order to remain in compliance with the Hatch Act. Partisan political activity is any activity directed towards the success or failure of a political party, candidate for a partisan political office, or partisan political group and can include verbal remarks and speech.

Please do not hesitate to contact us if you have any questions or concerns, or if we can be of any additional assistance.

Thanks very much,

Ed

- Stewardship for America with Integrity and Excellence -

--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell (b) (6) [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Mailing Address:
Departmental Ethics Office
Office of the Solicitor

Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Fri, Jul 13, 2018 at 4:30 PM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> Hi,
>
> Just wanted to quickly follow-up on this to confirm that it is okay for David to speak at this event on Tuesday.
>
> Thanks
>
> On Thu, May 31, 2018 at 4:03 PM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:
>
> > Gareth:
> >
> > After reviewing the meeting request for DB to address Upstream Members at API and after reviewing the meeting participant list, both Nobel Energy and Halliburton appeal on DB's recusal letters. Accordingly, DB is recused from discussing particular matters involving specific parties in which Halliburton is a party or represents a party (5 CFR 2635.502). Further and according to the Ethics Pledge, DB is prohibited from participation in any meeting or communication with (Nobel Energy or Halliburton) unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.
> >
> > Markee
> >
> > ---------- Forwarded message ----------
> > From: **Connors, Margaret** <margaret.connors@sol.doi.gov>
> > Date: Wed, May 30, 2018 at 1:08 PM
> > Subject: Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
> > To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>
> >
> > Ed:
> >
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> >
> > Markee
> >
> > On Wed, May 30, 2018 at 9:42 AM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:
> >
> > > Is it a lunch, meeting with coffee & pastries? If so, we may need to document this. Will

> > others be present? How many?
> >
> > Markee
> >
> > On Wed, May 30, 2018 at 9:31 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:
> > > There is no charge for the event. API invites its Upstream Committee to DC and then invite guest speakers to attend. Is there still a need for a WAG as there is not cost?
> > >
> > > On Wed, May 30, 2018 at 9:25 AM, Connors, Margaret <margaret.connors@sol.doi.gov> wrote:
> > > > Did you fill out a WAG for this event? If not, please do so and send it to me. I looked and I do not have a WAG from you.
> > > >
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> > > > > > Erik
> > > > > >
> > > > > >
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> > > > > > **From:** Rees, Gareth <gareth_rees@ios.doi.gov>
> > > > > > **Sent:** Tuesday, May 29, 2018 11:14 AM
> > > > > > **To:** Erik Milito <militoe@api.org>
> > > > > > **Subject:** Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

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> Best regards,
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> Group Director, Upstream & Industry Operations
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Cel (b) (6)

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Washington, DC 20240
Phone: 202-513-0325

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Cell (b) (6) [redacted]

ETHICS PLEDGE

As a condition, and in consideration, of my employment in the United States Government in an appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.

2. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions.

3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

6. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

7. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 28, 2017, which I have read before signing this document, defines certain terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.

David Burhance
Signature

8/10, 2017
Date

David Leigh Bernhardt
Print or type your full name (last, first, middle)

SWCA®
ENVIRONMENTAL CONSULTANTS
Sound Science. Creative Solutions.®

Petition to Delist the American Burying Beetle (*Nicrophorus americanus*) in Accordance with Section 4 of the Endangered Species Act

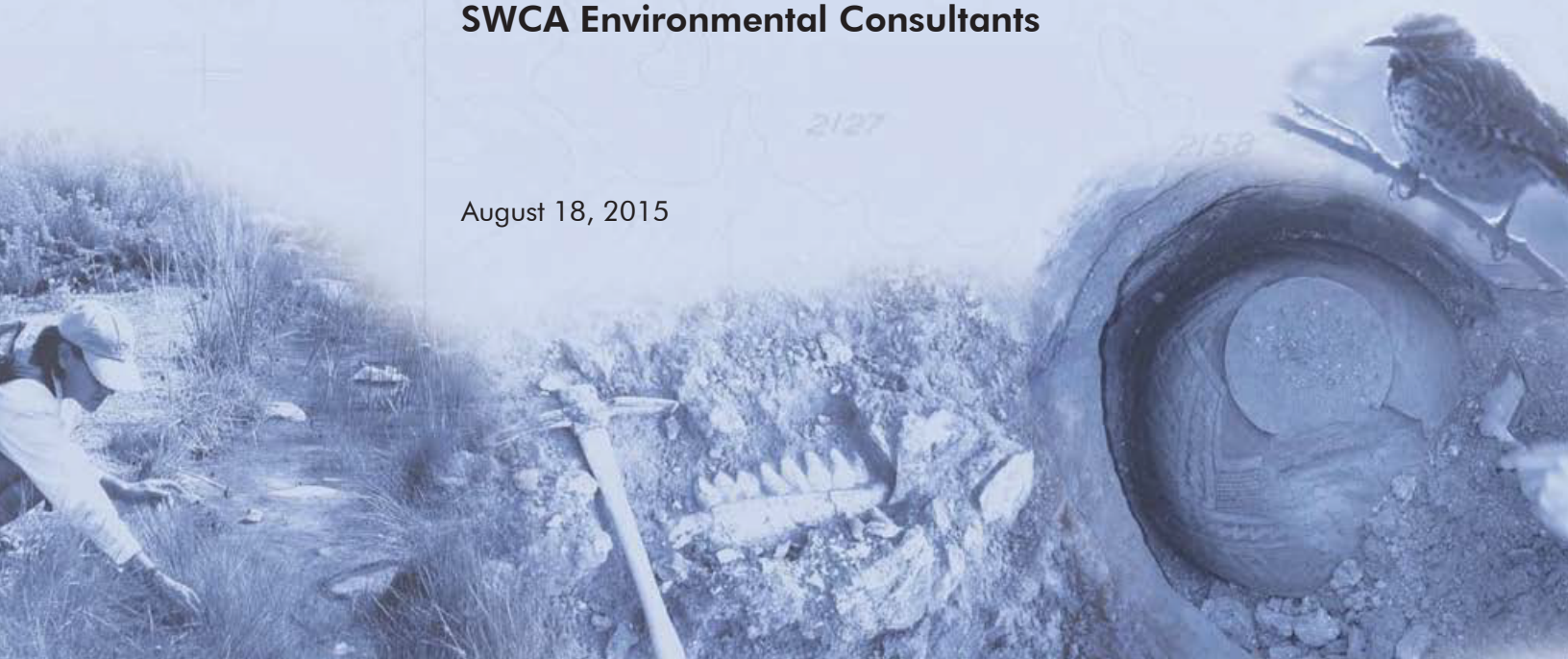
Petitioned by

American Stewards of Liberty
Independent Petroleum Association of America
Texas Public Policy Foundation
Dr. Steven W. Carothers

Prepared by

SWCA Environmental Consultants

August 18, 2015



SIGNATURES

WE, THE PETITIONERS, RESPECTFULLY SUBMIT THIS PETITION TO DELIST THE FEDERALLY ENDANGERED AMERICAN BURYING BEETLE *(NICROPHORUS AMERICANUS)* TO THE U.S. FISH AND WILDLIFE SERVICE FOR CONSIDERATION PURSUANT TO SECTION 4 OF THE ENDANGERED SPECIES ACT.



AMERICAN STEWARDS OF LIBERTY
DAN BYFIELD, CEO
624 SOUTH AUSTIN AVENUE, STE. 101
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INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA
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TABLES

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1.0 PETITIONED ACTION

The Petitioners respectfully submit this petition to delist the American burying beetle (*Nicrophorus americanus*, ABB), an endangered insect, to the U.S. Fish and Wildlife Service (USFWS) for consideration under Section 4 of the Endangered Species Act (ESA).

Nicrophorus americanus is the largest of the carrion beetles (Coleoptera: Silphidae) in North America. The USFWS listed *N. americanus* as an endangered species (i.e., a species in danger of extinction throughout all or a significant portion of its range) in 1989 (USFWS 1989). In the agency's final listing rule, the USFWS stated "once widely distributed throughout eastern North America, this species has disappeared from most of its former range" (USFWS 1989). Claims of a 90 percent reduction in the historic range of the species were the foundation of the USFWS's decision to list *N. americanus* as endangered – yet scientifically defensible, range-wide studies of presence/absence or abundance have never been completed for this highly variable and eclectically distributed species. While anecdotal evidence of a historic decline in the range and distribution of *N. americanus* exists in the public record (likely related to the demise of the passenger pigeon and the expansion of modern agriculture around the turn of the 20th century, as postulated by Sikes and Raithel 2002), there is no evidence that *N. americanus* is currently in danger of extinction across all or a significant portion of its contemporary range. Historic conditions are not relevant to current status determinations under the ESA – proper analysis of the five ESA listing factors must be based on present or threatened future conditions. In fact, the known contemporary range, distribution, and abundance of *N. americanus* is actually expanding with the application of increased and more effective survey effort, as well as the implementation of multiple captive breeding and reintroduction efforts. Furthermore, at the time of listing, the USFWS was unable to identify any actual threats to current populations of *N. americanus* and more recent analyses of threats are based largely on speculation and assumption – not actual evidence of downward pressure on the current abundance or distribution of the species. Population and habitat viability modeling involving the USFWS and other experts also indicates that all naturally occurring wild populations of *N. americanus* are of sufficient size to be demographically viable for the foreseeable future.

In short, the Petitioners request that the USFWS delist *N. americanus* from protection under the ESA, since the best available science does not support the existence of any threats significant enough to be driving *N. americanus* towards extinction in the foreseeable future.



- Historic range contractions are not relevant to the current status of the species and reliance on anecdotal collection records to infer trends is fraught with bias and non-scientific analysis.
- The known range, distribution, and abundance of the species has been expanding in recent decades with additional survey effort, including a 100-fold expansion of the known range since listing and a 3% range expansion in 2015.
- All known naturally occurring wild populations are demographically viable for the foreseeable future, with little risk of extinction under estimated current conditions.
- No actual threats to the species have been substantiated with contemporary evidence of population declines.
- Recent trends in land use and land cover change within the range of the species are not significant and do not suggest current changes in the overall availability of actual habitat for the species.
- The species is easily raised in captivity and reintroduction efforts are underway, with recent advances in marking techniques that should improve the success of such efforts.

Addressing this erroneous listing as quickly as possible is of prime importance to the Petitioners. Several of the Petitioners believe that species inappropriately receiving the protections of the ESA cause significant economic harm. In the case of *N. americanus*, many land development, agriculture, transportation, and pipeline or utility operations are delayed or restricted due to the presence of the beetle (Williamson 2014). In the state of Oklahoma, *N. americanus* has cost $6.5 million in protection efforts over the last 20 years, including $1.3 million that the Oklahoma Department of Transportation spent on conservation actions in a 6-year time span (Palmer 2015). The erroneous listing of *N. americanus* has caused delays of essential road and bridge projects and costs Oklahoma taxpayers (Smoot 2015). The *N. americanus* has also caused issues with the development of the Keystone XL Pipeline, a $5.3 billion project, related to permitting and protection for *N. americanus*, as well as related lawsuits (Laskow 2012; Snyder 2013). Others believe that the objectives of the ESA are best served by focusing limited conservation resources on species that truly warrant the protections of the ESA. All Petitioners believe that *N. americanus* should no longer be listed as threatened or endangered under the ESA.

Pursuant to ESA Section 4(b)(3)(A), the question USFWS must determine at this stage is "whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted." This is a relatively low-threshold burden of proof. For the purposes of this decision, "'substantial information' is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)(1)).

2.0 SPECIES AND HABITAT DESCRIPTION

Nicrophorus americanus is a carrion beetle that feeds and reproduces on vertebrate carcasses within a certain size range. Carcasses used by *N. americanus* typically range from 100 to 300 grams; although, smaller, presumably suboptimal, carcasses ranging from 30 to 100 grams are also used (Kozol et al. 1988). Larger carcass size has been associated with increased reproductive output (USFWS 2014a), but

the relationship may not be strong. For example, Smith (2011), in a study by the Oklahoma Department of Wildlife Conservation funded by a USFWS Section 6 grant that was not cited in USFWS (2014a), found that "carcass size did not impact brood size or larval mass so size of carcasses may not be as much of a limiting factor as competition for carcasses and subsequent reproductive success."

Carrion beetles, such as *N. americanus*, bury their carcasses beneath the soil to help protect the carcass from scavenging by other animals. Because of this behavior, the texture and moisture content of the soil upon which a carcass is found contributes to appropriate habitat for this species. It appears that soil conditions must be somewhat conducive to excavation by *N. americanus* individuals, indicating a moderate level of pliability regardless of soil type (Anderson 1982; Lomolino and Creighton 1996); although, *N. americanus* will move carcasses up to 1 meter to better soil conditions and members of the genus have been documented using animal burrows or other similar features to "bury" carcasses (USFWS 1991, Jurzenski 2012). Soil moisture also appears to be a factor in preventing desiccation while brooding or overwintering (Bedick et al. 2006).

Vegetation cover contributes to appropriate habitat for *N. americanus* by providing the litter or detritus under which *N. americanus* are believed to shelter during the day in the species' summer active season (USFWS 2014a). Vegetative detritus also contributes to the maintenance of appropriate soil conditions during the brooding and winter inactive periods (USFWS 1991). *Nicrophorus americanus* has been observed in multiple types of vegetation communities including grasslands, grazed pastures, scrub, deciduous woodlands, pine forests, bottomland/riparian woodlands, and edge habitats. The species is highly mobile and appears to move readily between vegetation communities, indicating a lack of vegetation preference (USFWS 2014a). Habitat for *N. americanus* is not dependent upon vegetative structure or composition – or even on specific soil types, but instead is thought to rely on specific-sized carcasses lying on top of soils suitable for the burial of such carcasses. In fact, the USFWS acknowledges this association by stating in the agency's most recent, albeit informal, status review (USFWS 2014a):

> Holloway and Schnell (1997) found significant correlations between the numbers of ABBs caught in traps and the biomass of mammals and birds, irrespective of the predominant vegetation (USFWS 2008b) suggesting that the habitat *per se* is not the key environmental driver for occupation of an area by ABB, but rather the density of their reproductive resources (small mammals and birds) found within those habitats.

Nicrophorus americanus has a summer active season that typically runs between late April and September, when ambient nighttime air temperatures consistently exceed 60 degrees Fahrenheit (USFWS 1991). During this period, individuals forage, pursue mates, locate and defend suitable carcasses, and rear broods. When not engaged in brood rearing, *N. americanus* individuals are believed to shelter under vegetation litter on the ground surface during the day and are most active above ground from two to four hours after sunset (Walker and Hoback 2007, Bedick et al. 1999). Some weather conditions, including extreme temperatures, rain, and strong winds, reduce the summertime nocturnal activity of individual *N. americanus* (Bedick et al. 1999).

During their active season, *N. americanus* as a species is thought to have two peak periods of above ground activity (USFWS 2008). The first occurs over several weeks in the early summer after the beetles emerge from their winter inactive season to forage, locate suitable carcasses for feeding and brood rearing, and attract mates. Burying beetles are capable of finding a carcass between one and 48 hours after death at a distance up to two miles (Ratcliffe 1996). If successful, a mated pair will raise a brood underground near a buried carcass, a process that typically takes about 48 to 65 days (Kozol et al. 1988). Adults provide extensive parental care of their brood and typical brood sizes are between 12 and 18 larvae (Kozol 1990). A second period of above-ground activity by *N. americanus* occurs in late summer when new adults (called tenerals) emerge to feed before the next winter inactive season. The parents die off

after reproduction or during the subsequent winter. The life cycle of this beetle is thought to last about one year (USFWS 2014a). Because of this short life span, USFWS (2014a) states that each year's population levels are largely dependent on the reproductive success of the previous year, with "high numbers and abundance in one year, followed by a decline in numbers the succeeding year, or vice versa" (USFWS 2014a).

N. americanus has been reported moving distances of 0.10 to 18.6 miles in various parts of the species' range (Bedick et al. 1999, Creighton and Schnell 1998, Jurzenski et al. 2011, Schnell et al. 1997-2006). However, 6.2 miles appears to be the average maximum distance travelled by an individual beetle over six days with an average of approximately 1.03 miles per night (Creighton and Schnell 1998). This high degree of mobility and lack of fidelity to any particular vegetation or soil type means that the presence of *N. americanus* individuals at any particular location is highly variable. USFWS (2014a) states that "survey data for ABBs in Oklahoma has documented both positive and negative ABB survey results in the same calendar year and even the same ABB active season within the same general location."

Once ambient nighttime air temperatures consistently drop below 60 degrees Fahrenheit, *N. americanus* individuals bury into the soil, generally at or just below the frost line, to overwinter for a period of eight to nine months (USFWS 2014a). Again, the vegetation community at overwintering sites generally does not appear to be an influencing factor in overwinter survival rates, at least for the Oklahoma population (Holloway and Schnell 1997). Having access to a carcass during the winter appears to improve the overwinter survival rate of *N. americanus* individuals, which studies estimate ranges between 25 percent to about 70 percent (USFWS 2014a).

3.0 SCIENTIFIC AND REGULATORY HISTORY

The USFWS' decision to list *N. americanus* as endangered with extinction hinged largely on observations gleaned from historic and contemporary collection records that the species appeared to be extirpated from a significant portion of its historic range. USFWS (1991, 2014a) describes the historic range of *N. americanus* as including "over 150 counties in 35 states" that cover "most of temperate eastern North American and the southern borders of three eastern Canadian provinces." While the USFWS also notes that "documentation of records is not uniform through the broad historical range," neither the history of collection records nor current survey efforts represent a focused, systematic survey of presence or absence across this historic range over time. Nevertheless, the USFWS continues to describes the current status of *N. americanus* as dire since the "during the 20th century, the ABB disappeared from over 90 percent of its historical range" (USFWS 2014a). Instead, the when considering listing *N. americanus* as endangered in 1989, USFWS should have acknowledged that it lacked robust or even sufficient evidence of any actual contemporary decline in *N. americanus* range, distribution, or abundance that would have pointed to a trend towards extinction.

Table 1. History of range, distribution, and abundance information and regulatory decision-making for *N. americanus*.

Date	Event
1790	Olivier first describes the species, *N. americanus*, from an undesignated type locality (USFWS 1991).
circa 1850 - 1920	Historic collection records document the presence of *N. americanus* across the "Atlantic region from the middle states to Texas," and some records include notes about the "abundant," "widely distributed," and "frequent" observations of *N. americanus* during this period (Davis 1980).

Date	Event
circa 1920 - 1950	Collections of *N. americanus* apparently decline across the eastern edge of the range. The species appeared to be largely extirpated from mainland portions of states east of the Appalachian Mountains by the 1940s. Reports of *N. americanus* from the central Midwest states declined through 1950s (USFWS 1991).
circa 1950 - 1989	Collection records and other personal communications during this period note the "lack of recently collected specimens" and "lack of success in trapping *N. americanus*," with many collectors reporting no success in collecting *N. americanus* from many localities (Davis 1980). USFWS (1989) stated that "since 1960, this once ubiquitous species has been collected only in Ontario, Kentucky, Arkansas, Michigan, Oklahoma, Nebraska… and in two New England states." *Nicrophorus americanus* distribution records during the three decades leading to the listing decision document a known range that included eight U.S. or Canadian states.
1984	USFWS recognized *N. americanus* as a candidate for listing, but noted that sufficient biological information was not available to support a proposed rule (49 FR 21670).
1989	USFWS lists *N. americanus* as endangered under the ESA on the basis of an apparent decline in historic range and abundance based on curated collection records and poorly supported assertions of contemporary declines (USFWS 1989). USFWS (1989) provided no evidence of any actual or ongoing threats to the species ("the cause of the species decline is unknown"). The known range of *N. americanus* is described as being limited to two extant populations: one in Rhode Island and another in eastern Oklahoma, "despite extensive efforts to locate additional populations." The USFWS describes the Block Island population as having an estimated population of 520 individuals in 1986, and reports the collection of only 10 individuals from the Oklahoma site over a 10-year period.
1991	USFWS publishes a recovery plan for *N. americanus* that describes the expansion of the known range in Oklahoma from a single site to four counties and reports the collection of 219 individuals from Oklahoma in 1991 – a substantial increase compared to the Oklahoma collections cited in the 1989 listing rule. USFWS considered the population on Block Island to be "apparently stable" at a level of approximately 500 individuals. USFWS proposes that the decline in *N. americanus* may be related to habitat loss and fragmentation that altered the composition of the vertebrate fauna community and reduced the abundance of carrion resources of the size preferred by *N. americanus*.
2005	Amaral et al. (2005) published a population and habitat viability assessment for *N. americanus* that estimated all naturally occurring *N. americanus* populations to be at least 1,000 individuals and projected little risk of single extinction given estimated current conditions. The assessment included input from a wide variety of experts, including the USFWS, state wildlife agencies, university researchers, zoos involved in *N. americanus* captive breeding programs, and the International Union of Concerned Scientists Conservation Breeding Specialist Group.
2008	USFWS publishes a 5-year Status Review of *N. americanus* that recommended continued endangered status despite acknowledgement that the known range and distribution of the species greatly expanded since listing, several populations occur on public lands or private conservation lands, multiple populations are estimated to be "demographically viable over the long term," captive breeding stocks and the husbandry practices are "well-established," and actual threats to the species remain either a "longstanding hypothesis" or "purely theoretical." Nor does USFWS provide any evidence of how or to what extent current populations continue to be affected by these hypothetical or theoretical threats. The range of the species at this time is known to include much broader distribution over parts of seven states.
2014	USFWS publishes an updated biological review of *N. americanus* to support its general conservation plan for addressing the purported impacts of Oklahoma oil and gas development on the species. USFWS (2014a) states that *N. americanus* is now known to occur in nine states: Block Island, Rhode Island; Nantucket Island, Massachusetts; eastern Oklahoma; western Arkansas; Loess Hills and Sandhills regions, central Nebraska; Chautauqua Hills region, southeast Kansas; south-central South Dakota; northeast Texas; and Missouri (a designated non-essential, experimental population). This distribution incudes three national wildlife refuges and several other public or private conservation areas.

Date	Event
2015	USFWS expanded yet again the known range of *N. americanus* in Oklahoma to accommodate new positive survey records from the western edge of its known distribution. The expansion added more than 500,000 acres to the range of the species in Oklahoma, an increase of approximately 3 percent (USFWS 2015a).

4.0 DELISTING PRECEDENTS

Delisting a species from the protections of the ESA may occur as a result of achieving recovery, species extinction, or new analysis that indicates that the original listing was in error. Since 1967, 59 species have been delisted (51 domestic and 8 foreign species). Of these, 19 were delisted because the original data were found to be in error, 30 have been recovered, and 10 have gone extinct (USFWS 2015b).

4.1 Recovery

The Policy and Guidelines for Planning and Coordinating Recovery issued by the USFWS in 1990 defines recovery as "the process by which the decline of an endangered or threatened species is arrested or reversed, and threats to its survival are neutralized, so that its long-term survival in nature can be ensured. The goal of this process is the maintenance of secure, self-sustaining wild populations of the species" (USFWS 1990:1). While there is a regulatory basis for the development of recovery plans, there is no requirement that recovery plans be implemented. **It is also important to recognize that neither the ESA nor the USFWS regulation establishes that recovery plans act as the sole determinant of a species' progress towards achieving recovery.**

For example, in its final rule to delist the Lake Erie water snake in 2011, the USFWS states that "recovery plans are intended to provide guidance to the USFWS, States, and other partners… they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under 4(a)(1) of the Act" (76 Fed. Reg. 50681). In regard to implementation of recovery plans, the USFWS identifies that "there are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met" (76 Fed. Reg. 50681). Moreover, "the determination to remove a species from the Federal List of Endangered and Threatened Wildlife is ultimately based on an analysis of whether a species is no longer endangered or threatened" (76 Fed. Reg. 50681). Therefore, a species may be delisted on the basis of recovery even if the specific recovery criteria identified in the species' recovery plan have not been met.

Other examples of species that have been delisted on the basis of recovery not necessarily defined by strict adherence to published recovery plan criteria include the following:

- **Columbian White-tailed Deer (*Odocoileus virginianus leucurus)*, Douglas County distinct population segment) (68 Fed. Reg. 43647) -** In 2003, the Douglas County distinct population segment of the Columbian white-tailed deer (distinguished in the 1983 revision to the recovery plan) was delisted due to recovery. Prior to listing, the species had declined by 1970 to just two known populations representing approximately 400–500 individuals. Largely as a result of conservation efforts and regulations on hunting, by 2002, the species increased to over 6,000 known individuals (68 Fed. Reg. 43651). This represents a population increase of 1,417.5% (based on a starting value of 400 known individuals). Despite this population increase, there remained only two known

populations of the species at the time of delisting, and the range of the delisted population segment included only one county in Oregon. The basis for delisting the distinct population segment was the establishment of secure habitats. The recovery plan "did not define secure habitat to include only publically owned lands; rather, it provided further guidance on secure habitat by stating that local entities, including planning commissions, county parks departments, and farm bureaus could secure habitat through zoning ordinances, land-use planning, parks and greenbelts, agreements, memoranda of understanding, and other local jurisdictions" (68 Fed. Reg. 43651). They additionally encouraged conservation organizations to contribute through "easements, leases, acquisitions, donations, or trusts" (68 Fed. Reg. 43651).

- **Robbins' Cinquefoil (*Potentilla robbinsiana*) (67 Fed. Reg. 54968) -** In 2002, the Robbins' Cinquefoil was delisted due to recovery. This determination was based on the application of protective conservation actions and the addition of new viable populations. At the time of the listing in 1980, there was only one known population of the species that had been transected by development associated with the Appalachian Trail. Within that population, approximately 2,000 individual plants were known to occur. By the time the species was delisted, more than 14,000 individual plants were known to occur at two naturally occurring localities and two transplanted localities (67 Fed. Reg. 54968). This represents a known population increase of 600%. While the recovery plan initially called for four new transplant sites, it was later determined that only two of these sites needed to be viable. In response to comments received relating to the separation from the objectives outlined in the recovery plan, the USFWS iterated that "the objectives identified during the recovery planning process provide a guide for measuring the success of recovery, but are not intended to be absolute prerequisites, and should not preclude a reclassification or delisting action if such action is otherwise warranted" (67 Fed. Reg. 54972).

- **Aleutian Canada goose (*Branta canadensis leucopareia*) (66 Fed. Reg. 15643) -** In 2001, the Aleutian Canada goose was delisted due to recovery. In 1975, 790 individuals of the species were known to exist. By 1989, the population had increased to 5,800 known individuals (an increase of 634%). As a result of that increase, the species was down-listed to threatened. In 2000, there were 36,978 known individuals (an increase of an additional 537%) and the species was delisted (66 Fed. Reg. 15643). This represents a cumulative population increase of 4,580% from the time of listing. The species was determined to be recovered due to the discovery of new localities, the introduction of captive-bred individuals that led to an expanded range, and the elimination of threats like hunting by establishing closed hunting areas.

These are just a handful of examples where species have been delisted on the basis of recovery. In these cases, the USFWS determined that the threat of extinction and decline of the species had been reversed. In many cases, the conditions considered for recovery were different from those outlined in the initial recovery planning process as new scientific information became available. In all cases, some forms of perpetual protective measures were implemented in support of continued species security.

4.2 Extinction

To date, 10 species have been delisting under the ESA due to extinction. While this is a warranted justification for the removal of a species from the protections of the ESA, it is not relevant to *N. americanus* and therefore not discussed further in this petition.

4.3 Original Data in Error

The third acceptable criteria for delisting are instances where the original data used to support the listing is determined to be in error. In such cases, **delisting may be warranted if the analysis of new information or a reanalysis of the original information indicate that the existence or magnitude of threats to the species, or both, do not support a conclusion that the species is at risk of extinction now or in the foreseeable future**. Examples of species that have been delisted on the basis of an erroneous listing include:

- **Pine Barrens treefrog *(Hyla andersonii)* (48 Fed. Reg. 52740) -** In 1983, the Florida population of the Pine Barrens treefrog was delisted due to a finding that the original data were in error. The USFWS stated "recent evidence indicates that the species is much more widely distributed than originally known" (48 Fed. Reg. 52740). At the time of the listing, there were only seven known localities of this species in Florida and the predominant threat was cited as "the present or threatened modification, or curtailment of its habitat or range" (48 Fed. Reg. 52741). By 1979, several more populations were identified, and by 1980 there were over 150 confirmed occupied locations for the species (an increase of at least 2,042%). The final rule noted that while the overall distribution of the species was relatively limited, the likelihood of discovering more known localities in consideration with the additional new sites discovered indicated that "the Florida population is relatively secure for the immediate future" (48 Fed. Reg. 52741).

- **Rydberg Milk-Vetch (*Astragalus perianus)* (54 Fed. Reg. 37911) -** In 1989, the Rydberg Milk-Vetch was delisted on the basis of erroneous data. At the time when this species was listed, there was only one known locality. The subsequent delisting was based on the discovery of 11 additional localities over nine years of research (an increase of 1,100%). This delisting was supported by the existence of regulatory mechanisms that minimized the impacts of the threats identified in the initial listing factors.

- **McKittrick pennyroyal *(Hedeoma apiculatum)* (58 Fed. Reg. 49244)** - In 1993, the McKittrick pennyroyal was delisted because of "the number of newly discovered populations and the remote and inaccessible nature of the habitat" (58 Fed. Reg. 49244). This species was at the time of listing and continues to be only known from two counties, one each in Texas and New Mexico. At the time of listing, there were 7 known localities of the species. At the time of delisting, there were 36 known populations of the species (an increase of 414%) (58 Fed. Reg. 49245). The USFWS determined that since this plant species occurs in hard-to-reach habitats, it is likely that its distribution is even broader than the confirmed locations, and that its natural preferred habitat limits the likelihood of human-related impacts.

- **Utah (Desert) Valvata snail *(Valvata utahensis)* (75 Fed. Reg. 52272) –** In 2010, the Utah Valvata snail was delisted on the basis of new information. At the time of listing in 1992, the species was believed to occur in only "a few springs and mainstream Snake River sites" at, isolated points along the Snake River. The species was delisted after data showed that the species range extended an additional 122 miles beyond the initially identified range (an increase in the known range of 118.5%). The USFWS determined that due to the increased range of the species, the listing factors would not contribute to the likelihood of the species being threatened with extinction in the foreseeable future. Among the threats discussed, impacts to its habitat from agricultural and industrial purposes were excluded as threats because "the species persists in these varied mainstem Snake River systems, including impounded reservoir habitats" (75 Fed. Reg. 52280).

This distinction is critical because despite the continued presence of previously perceived threats, the proven ability of the species to continue to thrive in those conditions supported delisting.

5.0 JUSTIFICATION FOR THE PETITIONED ACTION

Herein, the Petitioners present and analyze the credible scientific or commercial information that would lead a scientifically accurate species status review to conclude that delisting of *N. americanus* may be warranted. The following assessment demonstrates how the original listing was in error, even given the information available at the time, and that information that became available subsequent to the listing decision continues to demonstrate that *N. americanus* is not now threatened and never was at risk of extinction in the foreseeable future. Therefore, the Petitioners believe that *N. americanus* should be delisted.

5.1 Original Listing in Error

In 1989, the USFWS stated in its final listing rule for *N. americanus* (USFWS 1989:29654):

> Endangered status is warranted by the decline in the species' range from more than a third of the continental United States and parks of southeastern Canada to only two verified populations. Failure of 1986 efforts to relocate the species in Arkansas and Michigan suggests that whatever caused the decline of the species was at work at least as recently as the mid 1970's. While it is not improbable that other remnant populations will be discovered in the future, it is likely that those populations remain vulnerable to the factors that have caused the general decline of the species. Further, there is no known way to reverse any decline that might occur in the known populations.

The Petitioners believe that the USFWS erred in 1989 when it determined that *N. americanus* was endangered with extinction over all or a significant portion of its range. The best scientific and commercial information available at the time of listing was not sufficient to demonstrate that any one or a combination of the five factors necessary for listing described in Section 4(a)(1) of the ESA was at the time driving *N. americanus* towards extinction. Instead, the USFWS based its listing decision on largely antidotal evidence of a historic reduction in the range of *N. americanus*, a misunderstanding of the current range and distribution of the species, and speculation about the existence of unspecified "threats" that were presumed to be causing a decline in the species. In fact, at the time of listing, USFWS had no information at all about any threats acting on the species and no credible information on trends in the *N. americanus* population – let alone any evidence of current or recent declines. Therefore, the USFWS had no rational basis for determining in 1989 that *N. americanus* was endangered with extinction. Clearly, the listing was in error.

5.1.1 Historic Range Contraction Not Relevant to Current Status

The assertions made by USFWS in the 1989 listing rule about the purported decline in the range of *N. americanus* were based on data gleaned from historic and contemporary entomological collections housed in permanent repositories. Relying on historical collections to make conclusions about trends in a species' range or abundance is inappropriate due to significant issues with collector bias, variations in collection methods and levels of effort, and problems with "presence only" data sets (Davis 1980; Pearce and Boyce 2006; Jeppsson et al. 2010; Shaffer et al. 1998). In fact, there is a wealth of information in the scientific literature warning of such issues. In a similar instance of using natural history collections (NHCs), Jeppsson et al. (2010:1950) is very clear about the perils of collection bias stating that "a major

drawback in using historical collections, however, is that such data sources in most cases are based on nonstandardized sampling methods. Thus one needs to consider potential biases in the data, such as changes in sampling effort, changes in sampling methods and the effects of increased knowledge on species biology." They go further and detail those biases (Jeppsson et al. 2010:1941):

> Potential sources of bias: (1) *No records of absences* – There is usually no knowledge about species absences, making it difficult to know whether a lack of records is due to species absence, non-detection (e.g. from stratified presence/absence studies) or that the location has not been visited (e.g. for presence only data); the real reason is, however, usually unknown [37]; (2) *Changes in sampling effort* – It cannot be assumed that the sampling effort has been constant over time, because NHCs usually stem from many years and many sources. Therefore, the yearly number of records of a specific species is not only dependent on the population size, but also on the yearly sampling effort; (3) *Changes in spatial coverage of sampling* – Three possible biases may arise. First, if the sampled area is constant, population increases due to expansion of the distribution may remain undetected. Second, if the sampled area changes with time, perceived population changes may not be real [21, 57]. Third, different collectors may recognize a name of a location as different in extension, giving the impression of changed spatial coverage; (4) *Changes of collection methods* – New knowledge on species' biology and new collection methods may increase species detection and collection, resulting in apparent but not necessarily true positive population trends; (5) *The attractiveness to collect a certain species may change* – NHCs depend on the willingness of collectors to collect specimens of different species. The attractiveness of a species is, among other things, influenced by the charisma of its visual characteristics, its sensitivity to human-induced habitat changes, its rarity, its red-list status, or its protection status. If any of these factors change with time, so may the collection effort for the species."

These same biases, plus additional important points, are also described in Shaffer et al. (1998). These authors discuss assumptions that must be considered when using such data, including two very relevant points to the USFWS's assertions about *N. americanus*: 1) that "the 'expertise' of the collectors is 'equal'" and 2) "normal biotic and abiotic factors regulations population fluctuations were the same during the sampling periods" (Shaffer et al. 1998:29).

The other main problem with the USFWS's claims of *N. americanus* declines inferred from historical collection data is related to the Jeppsson et al. (2010) warning about reliance on presence-only data. Pearce and Boyce (2006:406) discusses species abundance and distribution modelling and states: "knowledge of only the presence of a species presents a number of data-quality issues" and "…making use of 'presence-only' data, consisting only of observations of the organism but with no reliable data on where the species **was not** [emphasis added] found. Sources for these data include atlases, museum and herbarium records, species lists, incidental observation databases and radio-tracking studies." They also caution scientists by stating, "Our caveat is that researchers must be mindful of study design and the biases inherent in the presence data and be cautious in the interpretation" (Pearce and Boyce 2006:410).

Although not relevant to the 1989 listing decision, it is possible that *N. americanus* did incur a historic decline due to threats that are no longer relevant in today's current conditions. The USFWS (1991) offered several examples of historic declines in optimally sized carrion resources for *N. americanus*:

> Since the middle of the 19th century, two species of birds in the favored weight range for *N. americanus*, the passenger pigeon (*Ectopistes micratorius*) and the greater prairie chicken (*Tympanuchus cupido*), have been eliminated from the eastern North American fauna…Further, several other birds in this weight class, particularly certain gallinaceous

> birds such as the wild turkey (poults), waterfowl, and shorebirds, have severely declined rangewide. Wild turkeys, for example, occurred throughout the range of the American burying beetle, and until recently, were extirpated from much of their former range…The cessation of fertilizing agricultural fields with whole fish (prohibited, for example, by law on Long Island about 1920 according to Robert Latham *in litt*.), probably resulted in large-scale carrion reductions in areas where this practice was formerly common, particularly along coasts or rivers.

However, none of these historic carrion source declines were relevant to the listing of *N. americanus* in 1989. The passenger pigeon and the greater prairie chicken may have indeed been an abundant carrion source for *N. americanus* historically, but their declines began in late 1800s and their extinctions/extirpations occurred in the early 1900s (Kates 2005; Smithsonian Institution 2001), which are not pertinent to determining listing status in 1989 or continued listing today. While the decline of wild turkey populations in the U.S. in the early 1900s may have played a role in a historic decline of *N. americanus*, the range-wide comeback of this species was well underway in the 1970s (Iowa Department of Natural Resources 2015) and again not relevant to determining listing status in 1989 or continued listing today. Furthermore, the use of fish on farmlands as fertilizer that historically (i.e., early 1900s), provided carrion availability to *N. americanus* was an unnatural man-made resource that was only done in a small portion of the range of *N. americanus*; thus, not applicable to the range-wide abundance discussion of *N. americanus*.

The Petitioners note that the available evidence at the time, however flawed, pertaining to the presumed historic contraction of the *N. americanus* range had (and continues to have) no bearing on whether or not the species' range is currently contracting. As Davis (1980) points out in his paper on *N. americanus* collections, "the range at the turn of the century is only of historical importance. The present limits of its distribution are unknown. Almost nothing is known of its biology" (Davis 1980:245). Listing Factor A pertains to the "present or threatened" destruction, modification, or curtailment in habitat or range. If USFWS cannot demonstrate a present or likely future downward trend in habitat or range pushing a species toward extinction in the foreseeable future, this listing factor has not been substantiated. As the USFWS stated in a 2001 guidance document pertaining to the preparation of species status assessments for taxa under consideration for listing, "it is important to distinguish between current (say within the last 10 years) and historical trends; historical trends provide background and perspective, while current trends provide the evidence that listing is warranted or unwarranted" (USFWS 2001:4).

5.1.2 Unfounded Claims of Contemporary Population Decline and Restricted Distribution

In the 1989 listing rule, the USFWS made several claims about the presumed current decline of *N. americanus*. However, as described below, the USFWS did not have reliable information upon which to draw this conclusion. First, the final listing rule presented the known range of *N. americanus* as being composed of only two populations: one in eastern Oklahoma and another on an island off the coast of New England (Block Island, Rhode Island). However, subsequent survey efforts reported in the 1991 Recovery Plan quickly proved this distribution to be incorrect. Next, the listing rule (USFWS 1989) made assumptions regarding the *N. americanus* population based on the presence of five other Silphid congeners. USFWS (1989 states that "...the sporadic pattern of these collections at a blacklight that has reportedly been operated for more than 5000 hours since 1976 and the fact that at least five other species of *Nicrophorus* are regularly collected at this site, suggest that the size and stability of this population may be a matter of concern." However, the USFWS provided no data on the ecological relevance of using these other species as a surrogate for *N. americanus*. Finally, the investigations cited in the listing rule regarding the then current distribution and range of *N. americanus* were grossly inadequate for this purpose since they provided only one year of survey data for a species whose presence varies widely in

space and time without any information about methodology and/or level of effort used to select and survey the collection sites.

The USFWS reported that *N. americanus* had been collected from at least eight states during the 30 years prior to the listing decision: Kentucky, Arkansas, Michigan, Oklahoma, Nebraska, two New England states, and the Canadian state of Ontario (USFWS 1989). However, at the time of listing, the USFWS noted that the "once ubiquitous" *N. americanus* was then only known to occur in two locations, one at either end of its historic range. In the final listing rule, the USFWS expresses concern that "extensive" efforts during the 1980s to relocate the species in at least two of the recently documented states of occurrence (Arkansas and Michigan) were not successful, and that other efforts to locate the species in Oklahoma were also not successful. However, the USFWS soon discovered, with the application of additional survey effort, that *N. americanus* actually occurred in many other locations. By the time of the 5-year Status Review in 2008, the USFWS recognized that the distribution of *N. americanus* included dozens of counties across several states, and in 2015 the USFWS expanded even further (by more than 500,000 acres or nearly 3 percent) the range of the species in Oklahoma to accommodate positive survey results documented beyond the western edge of the previously "known" range (USFWS 2015a). Clearly, the "extensive" and "significant" efforts to locate *N. americanus* in the 1980's prior to listing were not particularly effective at detecting the presence of the species over large portions of the historic range. The USFWS erred in 1989 when it presumed the range of *N. americanus* had decreased to only two small localities. The USFWS itself actually admits in the 2008 5-year Status Review that "the immediate threat of extinction has thus subsided in the 18 years since listing." (USFWS 1991:4).

The USFWS's conclusions about the presumed decline of *N. americanus* in the 1989 listing rule are unreliable since the USFWS failed to describe how collection efforts during the 30 years prior to listing compared to the 100+ years of historic collection efforts since the species was first described in 1790. As we discussed above, reliance on entomological collections to ascertain trends for range, distribution, or abundance are significantly flawed. The USFWS did not have a rational basis for making conclusions about trends in the status of the *N. americanus* with the data that was available at the time. The agency relied on largely incidental and anecdotal information, collected in a scattered and non-standardized fashion, to infer the current status of the species. As described above, the data available to the USFWS at the time was not sufficient for this purpose and led the agency to make unsupported conclusions about the *N. americanus*.

As part of its rationale for inferring a decline in *N. americanus* over time, the USFWS made comparisons with collection records for other congeneric species of carrion beetles. The 1989 listing rule repeatedly notes that insect collectors regularly collect other silphids at sites, often in abundance, implying that the lack of *N. americanus* collections or the low number of *N. americanus* collections was an indicator that *N. americanus* populations were in decline. However, the USFWS and the greater scientific community had very little information about the specific ecology of *N. americanus* itself, let alone how the ecology of *N. americanus* compared to that of other silphids. No science was available at the time that investigated the relationships among different carrion beetles. Davis (1980), one of the few publications actually cited by USFWS in the final listing rule, actually states "almost nothing is known of its biology and anyone knowing of a population is requested to contact the author" (Davis 1980:249). The USFWS provided no rational basis for using the distribution, abundance, or collection frequency of other silphids as a surrogate for inferring the status of *N. americanus*.

The USFWS noted in the final listing rule that:

> … failure of extensive efforts in 1986 to recapture American burying beetles at the sites of most recent captures in Arkansas and Michigan suggests a continuing constriction of the species' range. Significant efforts in 1986 and 1987 to locate American burying

> beetles on another New England island, where a 1985 capture was reported, were unsuccessful. Other recent unsuccessful capture efforts were conducted in northwestern Pennsylvania, New Jersey, New York (Long Island), Tennessee, western North Carolina, Torreya State Park in Florida, and on mainland areas in New England. The abundance of the species in collections (including student collections) with capture dates prior to 1950 and the ease of capture at blacklight and pitfall traps experienced at the site of the known extant island population confirm that these unsuccessful efforts to locate American burying beetles are indicative of their decline throughout most of their former range.

The USFWS describes these collection efforts as "extensive," despite involving only a year or two of survey effort. No other information was provided to document the methods or level of effort used to select or survey collection sites. The USFWS should have recognized instead that limited surveys do not appear to be sufficient to determine the status of *N. americanus*, at any scale, when the presence of *N. americanus* is highly variable. In fact, the USFWS describes in the final listing rule a pattern of *N. americanus* collections made by an individual in Oklahoma between 1976 and 1988 that actually demonstrates the wide variability of *N. americanus* detectability at a single site over a period of several years (Table 2). These collections were made at blacklight over more than 5,000 hours between 1976 and 1988 (USFWS 1989).

Table 2. Collection of *N. americanus* at an Oklahoma site between 1979 and 1988 by blacklight (USFWS 1989).

Year	*N. americanus* Collections
1979	1 specimen
Unknown date between 1979 and 1987	1 specimen; all other years collected 0 *N. americanus* specimens
1987	7 specimens
1988	1 specimen

The data from this collection series should have pointed USFWS to conclude that the inability to relocate *N. americanus* in Arkansas, Michigan, and other states – evidence cited by USFWS of recent and continued decline in the population due to exposure to unidentified threats – may simply have been the result of variability in the distribution and abundance of *N. americanus* at any given time and location. Instead, the USFWS erroneously concluded that conditions at the known Rhode Island population were typical of the species' ecology (USFWS 1989).

This presumption was unfounded since most of the historic *N. americanus* range did not involve islands. In fact, the natural conditions of Block Island, Rhode Island, had been highly altered for an extensive period. As stated in the 1991 Recovery Plan, "the Block Island population occurs on glacial moraine deposits vegetated with a post-agricultural maritime scrub plant community" and "Block Island was totally deforested by the mid-1700'…, and only in very recent decades has vigorous woody growth reappeared following the abandonment of grazing and agricultural practices" (USFWS 1991:15). Clearly, the conditions found on Block Island are not similar to the forests, prairies, or other vegetation communities where *N. americanus* has been documented across the eastern United States. Thus, the USFWS incorrectly presumed that the habitat parameters of an outlier population were representative of the conditions of the entire species.

5.1.3 No Information on Actual Threats to the Species

A clear error in the original listing rule is inability of the USFWS to identify any actual threats to the species or to demonstrate that any one or a combination of the five listing factors was actually driving *N. americanus* towards extinction; particularly regarding evidence of the "present or threatened destruction, modification or curtailment of habitat or range." The listing rule relies entirely on an assertion of the apparent decline of *N. americanus* from most of its historic range and an unfounded hypothesis that "the extent of the species' decline suggests that any newly discovered populations are also vulnerable to whatever factors have caused their disappearance elsewhere" (USFWS 1989). Instead, the USFWS acknowledged in the final listing rule that "habitat generally similar to that of the known population is not rare" (USFWS 1989).

The USFWS also states, without attribution, that "a low reproductive rate (compared with other insects) limits the ability of this species to rebound from any period of elevated mortality" as a potential threat under Listing Factor E (other natural or manmade factors affecting its continued existence) (USFWS 1989). However, the USFWS provides no evidence in the listing rule that *N. americanus* actually has a low reproductive rate compared to other insects – or even other silphids – and provides no substantiation that its reproductive rate is somehow limiting the population size or its ability to recover from stressors.

5.1.4 2008 5-year Status Review Did Not Adequately Consider New Information

The USFWS prepared a 5-year Status Review for *N. americanus* in 2008. The purpose of a 5-year status review is to ensure that listed species have the appropriate level of protection under the ESA. The reviews assess whether or not the status of a listed species has changed since the time of its listing or its last status review, and whether it should be classified differently or delisted. However, this review also included information that pre-dated the listing decision, clearly demonstrating that the USFWS did not consider all of the available science in its original 1989 listing decision (USFWS 2008, USFWS 1989). In the agency's 2008 5-year Status Review of *N. americanus*, the USFWS perpetuated their assertions regarding the historic range and abundance of *N. americanus* and recommend retaining endangered status, despite the discovery of additional populations. However, the size of the historic range is irrelevant to a species current listing status – only the range at time of listing or in light of the "present or threatened" curtailment of range is relevant to such regulatory decisions.

In the time since *N. americanus* was listed as endangered, numerous surveys of wild populations, as well as several reintroductions of captive-raised stock, were conducted and subsequently increased the known range of the species from two states (Rhode Island and Oklahoma) to seven states (Arkansas, Kansas, Nebraska, Oklahoma, Rhode Island, South Dakota, and Texas) in 2008 (USFWS 2008). The USFWS even stated in their 2008 5-year Status Review that "documentation that the ABB occurs throughout a more extensive range than that know at the time of listing is the most significant new information pertinent to this status review" (USFWS 2008:17). This increase in known range was primarily a product of an increased level of survey effort and more effective capture methodologies (i.e., capture with baited pitfall traps rather than at blacklight). With this information, USFWS should have recognized that there was never a threat to extinction in the first place—merely a lack of surveys to properly search for *N. americanus.* Instead, the USFWS justified continued listing, again, primarily on the basis that "even with the discovery of additional ABB populations, the species remains extirpated from about 90 percent of its historic range, and there is a significant disparity in distribution between the eastern and western portions" (USFWS 2008).

Significantly, USFWS (2008) did not adequately consider the findings of Amaral et al. (2005) that stated:

> … ABB populations in habitats that are able to maintain 1,000 beetles or more are viable long-term in the absence of severe catastrophic events or reduction in carrying capacity through reduced carcass availability, habitat loss or fragmentation… Currently, all naturally occurring ABB populations are estimated to be at least 1,000 individuals. The ABB model projects little risk of single population extinction and no risk of metapopulation extinction over the next 50 years given estimated current conditions.

The USFWS fails to acknowledge that Amaral et al. (2005) took into account "current conditions" and probabilities for catastrophic events. Instead, the agency (2008) relied on speculation and mere suggestion about the "possible factors" that contributed to the presumed disappearance of the species from parts of its historic range. In the listing factor analysis presented in the 5-year Status Review, USFWS discussed the current extent and potential for future changes to a variety of surface land uses, like agriculture, forestry, urban development, oil and gas production, and military training; pointing to these activities as evidence of habitat loss and fragmentation. However, USFWS provides no connection between the extent and magnitude of these land use changes and actual habitat for *N. americanus*, which is based on the vertebrate fauna community – not vegetation. Sikes and Raithel (2002) correctly points out that "…the factors that led to the decline of *N. americanus* may not all still be present."

Relying on an assessment of land use changes was not sufficient to demonstrate the loss, modification, or curtailment of habitat for N. *americanus*. The USFWS cites Trumbo and Bloch 2000, Sikes and Raithel 2002, Wolf and Gibbs 2005, Schnell et al. 2006 as "confirming the adverse effects of habitat modification and fragmentation on burying beetle abundance, diversity, and success" (USFWS 2008). However, none of the studies cited actually confirm the existence of "adverse effects" on *N. americanus*. Neither Trumbo and Bloch (2000) nor Wolf and Gibbs (2005) study *N. americanus* at all, but instead involve other species of carrion beetle in Michigan, Connecticut, and Maryland. Trumbo and Bloch (2000) even emphasize that different species of carrion beetle demonstrated different levels of activity in different "habitat types" (forested, edge, or open), which make the extension of their findings to *N. americanus* unsupportable. The other two publications cited as "confirmation" of this relationship also fail to support the USFWS's statement. Sikes and Raithel (2002) is a presentation of several hypotheses on the historic decline of *N. americanus*, not a scientific study presenting data about the adverse effects of habitat modification and fragmentation on *N. americanus* abundance, diversity, and success. Schnell et al. (2006) simply summarizes monitoring efforts on a commercial forest site. The assertion by USFWS in the 2008 5-year Status Review that scientific evidence confirmed that habitat modification and fragmentation adversely affects *N. americanus* was unsupported.

5.2 Continued Listing Not Warranted

We have demonstrated that the original listing of *N. americanus* was in error, based on faulty assumptions about the species' range, distribution, and abundance following what was likely a historic shift in the faunal composition of the eastern United States with the demise of the passenger pigeon. It is now clear that *N. americanus* exhibits stable and robust populations across several states and at least five different ecoregions. This post-passenger pigeon range, distribution, and abundance (where *N. americanus* are variably present at relatively low densities across eight to ten states) represents the "new normal" condition for *N. americanus*. In this context, there is no information to suggest that the status of the species is currently in decline.

Below we present a review of the current status of the species that incorporates new information since the time of the 2008 5-year Status Review and appropriately measures the current status of the species against its recent – not historic – range, distribution, and abundance. The USFWS's own guidance for preparing species status assessments (USFWS 2001) clearly states that "it is important to distinguish between

current (say within the last 10 years) and historical trends; historical trends provide background and perspective, while current trends provide the evidence that listing is warranted or unwarranted."

5.2.1 Range, Distribution, and Population Size

When listed as endangered in 1989, the USFWS described the known range of the species as occurring in a single Oklahoma site and at a relatively robust and stable population in Rhode Island. The best approximation of the current range of *N. americanus* is provided by the list of counties of known or suspected occurrence maintained by the USFWS on its Environmental Conservation Online System website (USFWS 2015c); except for Oklahoma, where the USFWS Oklahoma Ecological Services Field Office provides more specific range information for that state (USFWS 2015a). Table 3 and Figure 1 summarize the current extent of the known range for *N. americanus*, and show that *N. americanus* is known or suspected to occur across more than 51 million acres in 98 counties and ten states.

In 2008, USFWS described the extant range of *N. americanus* as including parts of seven states: Arkansas, Kansas, Nebraska, Oklahoma, South Dakota, Texas, and Rhode Island. By 2014, USFWS described the current range of *N. americanus* as including parts of nine[1] states (adding the state of Massachusetts and a non-essential, experimental population in Missouri to the list). Not included in either the 2008 or 2014 accountings are significant efforts by USFWS and others to reintroduce *N. americanus* to four different sites in Ohio that have released more than 1,000 captive bred *N. americanus* into the wild. USFWS (2014) states that "to date no ABBs have been captured in post-release years" in Ohio; although, this assertion is contradicted by USFWS (2008) that instead says "relatively few" *N. americanus* have been caught during post-release monitoring. In 2015, USFWS expanded yet again its description of the known range to include more than 500,000 acres to the western edge of the range in Oklahoma to accommodate new survey results (USFWS 2015a). In fact, the current known range in Oklahoma expands even the previously understood historic range of the species, as mapped in Sikes and Raithel (2002) (Figure 2)

1 USFWS (2014) includes an error in reporting the number of states with current records of occurrence. The text identifies nine states with current occurrences: Rhode Island, Massachusetts, Oklahoma, Arkansas, Nebraska, Kansas, South Dakota, Texas, and Missouri; but summarizes this information as including only eight states.

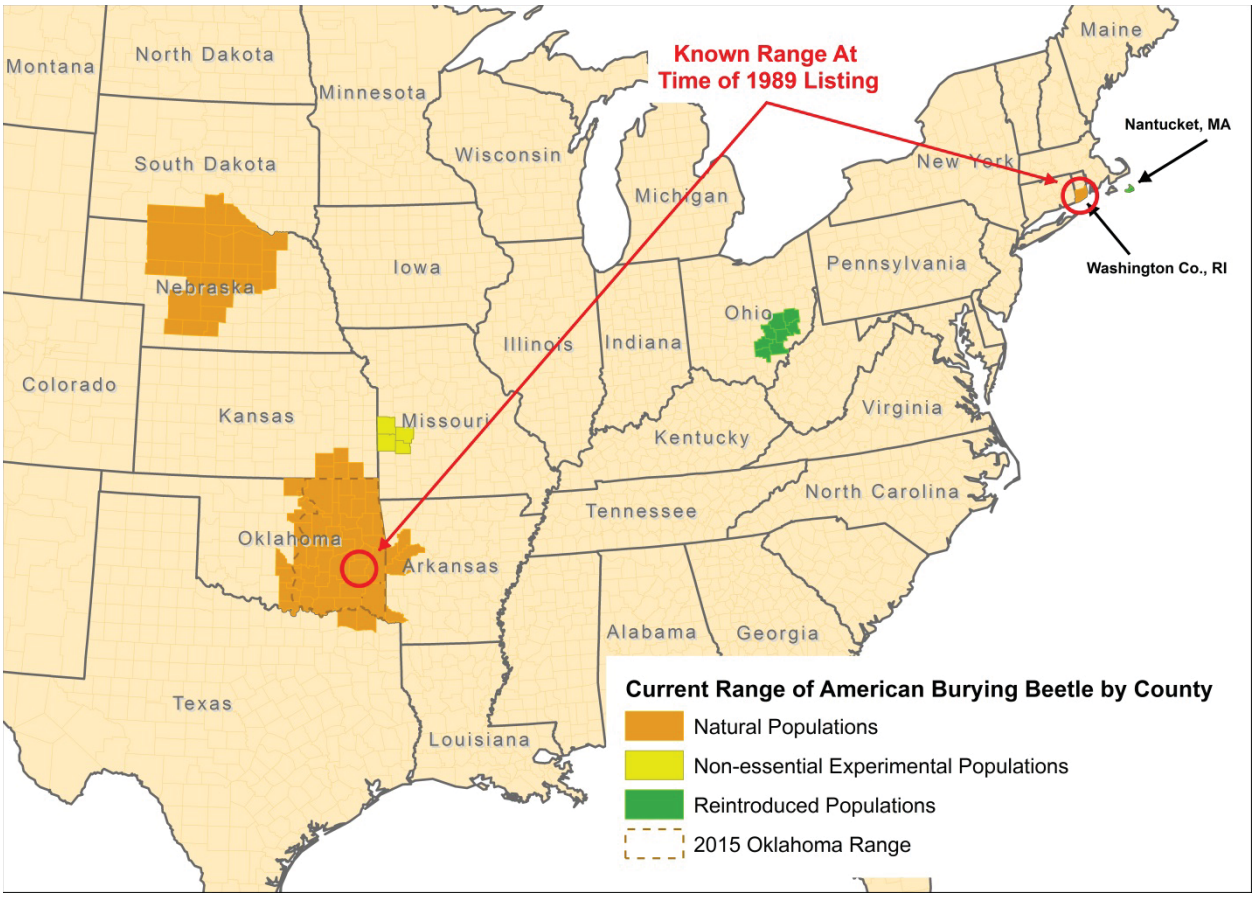


Figure 1. Known range of *N. americanus* since listing as endangered in 1989.

Therefore, the known range of *N. americanus* acknowledged by the USFWS has expanded from approximately 473,000 acres to more than 51,000,000 acres over a span of 26 years, representing a more than 100-fold expansion in size of the known range – two orders of magnitude. The extent of the known range including eight to ten states of occurrence has held relatively stable since the mid-2000s. However, as the 2015 known range expansion in Oklahoma suggests, the pattern of expanded survey effort leading to expanded known range indicates that the full extent of the current range of this species has not been delineated and it is likely that additional survey efforts will continue to expand the area across which the species is known to occur.

Even as recent as the 2014 biology review, the USFWS emphasizes the purported "90 percent decline" in the historic range of the species as evidence of the need for continued endangered status. However, it is more appropriate in the context of ESA listing decisions to instead emphasize the 100-fold expansion of the known range since listing. As the USFWS (2001) status review guidance indicates, this period of reference is a more appropriate basis for assessing the status of the species than the presumed range of *N. americanus* gleaned from occasional collections and anecdotal records from entomologists reported 100 years ago.

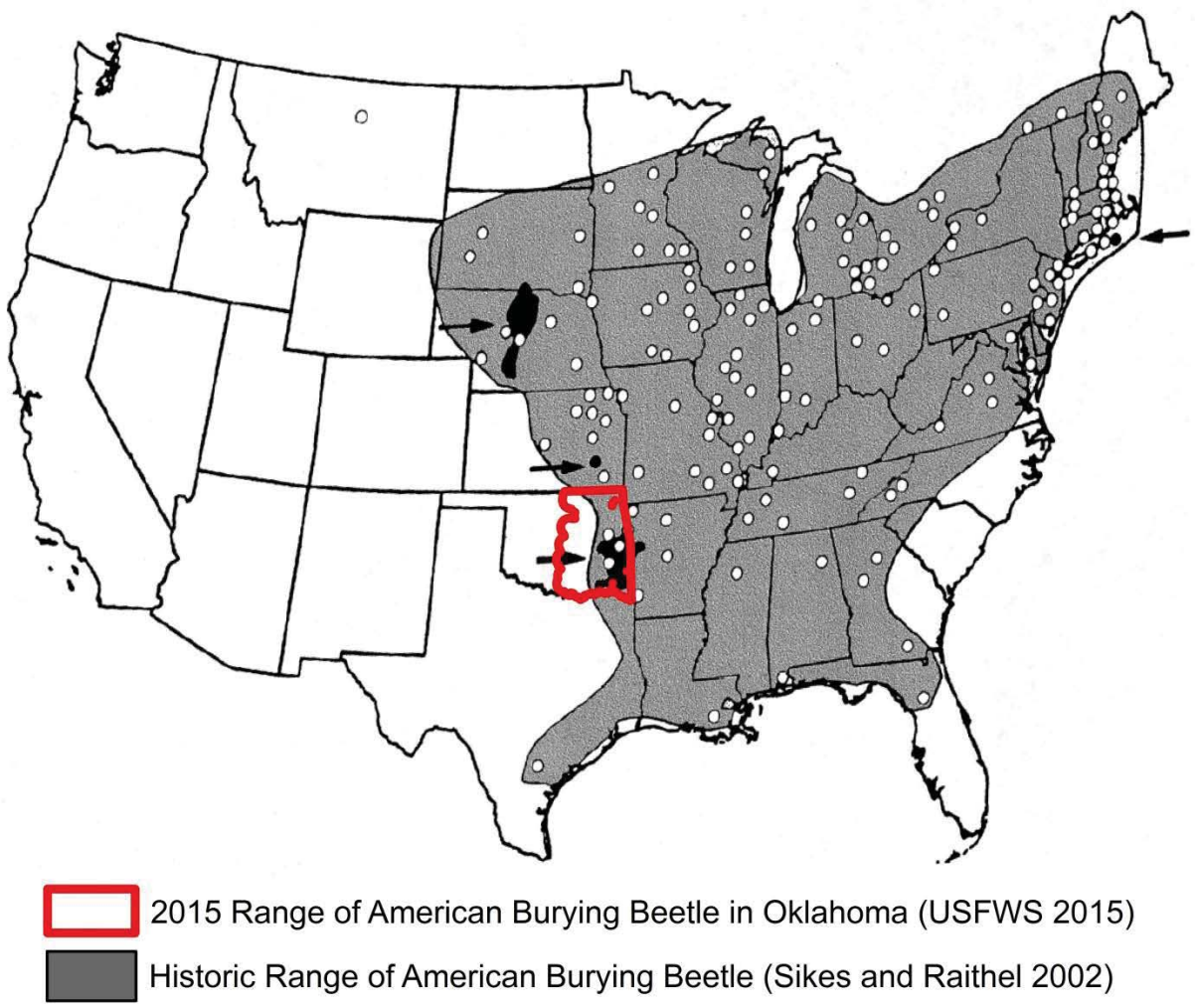


Figure 2. Historic range and current Oklahoma range of *N. americanus* (modified from Sikes and Raithel 2002).

The population of *N. americanus* is also substantially larger and more robust than known at the time of listing. The USFWS described the Block Island population as having an estimated population of 520 individuals in 1986, and reported the collection of only 10 individuals from the Oklahoma site over a 10-year period between 1979 and 1988. The estimated size of the current population includes more than 40,000 individuals across the range, and the populations in seven of the ten states comprising the current range have been recently described as stable or increasing in size (Backlund 2008, Jurzenski et al. 2011, Amaral et al. 2005, USFWS 2008). Moreover, population and habitat viability modeling by Amaral et al. (2005) suggests that:

> … ABB populations in habitats that are able to maintain 1,000 beetles or more are viable long-term in the absence of severe catastrophic events or reduction in carrying capacity through reduced carcass availability, habitat loss or fragmentation… Currently, all naturally occurring ABB populations are estimated to be at least 1,000 individuals. The ABB model projects little risk of single population extinction and no risk of metapopulation extinction over the next 50 years given estimated current conditions.

Furthermore, genetic studies of extant *N. americanus* populations across the range revealed little evidence that the populations in Rhode Island, Arkansas, South Dakota, Oklahoma, and Nebraska have unique genetic variation (Szalanski et al. 2000). In fact, Szalanski et al. (2000) found "no evidence to suggest that these five populations should be treated as separate, genetically independent conservation segments." Clearly, *N. americanus* currently maintains several redundant and well distributed populations that each has long-term viability, barring "severe catastrophic events" or reduced carrying capacity in occupied habitats.

Table 3. Current range, distribution, and estimated abundance of *N. americanus*.

STATE	COUNTIES OF KNOWN OR SUSPECTED OCCURRENCE*	APPROXIMATE RANGE (square miles)	ESTIMATED POPULATION SIZE (number of individuals)	TRENDS
South Dakota	4	3,467,188	~500-1,000 (Backlund 2008)	Stable (Backlund 2008)
Nebraska	25	18,794,346	~5,000 (Peyton 2003, Jurzenski 2012)	Stable/Increasing (Jurzenski 2012)
Kansas	5	2,003,610	Unknown (USFWS 2014a)	Unknown (USFWS 2014a)
Oklahoma	43**	19,541,875	>30,000 (Amaral et al. 2005)	Stable/Increasing (USFWS 2008)
Texas	2	1,271,430	Unknown (USFWS 2014a)	Declining/Possibly Extirpated (USFWS 2014a)
Arkansas	5	2,142,309	3,000-5,000 (Amaral et al. 2005)	Increasing (USFWS 2008)
Missouri (experimental, non-essential population)	4	1,834,310	240 released (USFWS 2012)	Increasing (Amaral et al. 2005)
Ohio	7	2,413,150	~1,000 released (U.S. Forest Service 2011)	Unknown (U.S. Forest Service 2011)
Rhode Island	1	214,773	1,000-2,000 (USFWS 2008)	Increasing (USFWS 2008)
Massachusetts	1	30,151	300 (Amaral et al. 2005)	Stable (Amaral et al. 2005)
Natural or Reintroduced Populations	94	49,878,834	~40,800 to ~44,300	
Non-essential, Experimental Populations	4	1,834,310	240	

Entire Range	98	51,713,144	~41,040 to ~44,540

*USFWS (2015c) **USFWS (2015a)

5.2.2 Analysis of Listing Factors

The ESA does not identify a minimum population, range, or distribution that must be achieved and maintained to warrant delisting a species. A listing or delisting determination is to be based entirely on the risk of species extinction from any one or a combination of the five factors provided in the ESA.

Listing Factor A (present or threatened destruction, modification, or curtailment of habitat or range):

The best available science indicates that *N. americanus*, a species that has been documented across 15 different ecoregions (USFWS 2008), is not dependent on any particular vegetation community, soil type, or even animal species. In this respect, *N. americanus* is clearly a habitat generalist (Holloway and Schnell 1997, Jurzenski et al. 2014). But, the actual habitat of *N. americanus* is best described as vertebrate carrion (species identity is not important) within a specific size range lying over soils that are conducive to burying (i.e., being neither too wet, too loose, nor too compact). This habitat is "scarce and unpredictable in space and time" (Jurzenski et al. 2014) and *N. americanus* are well adapted to detect and travel long distances to find its eclectically distributed habitat wherever it occurs. There is no evidence that *N. americanus* are constrained by human activities such that so-called "unfavorable" land uses necessarily present a barrier to movement.

Some researchers have postulated that changes in land use and land cover from human activities have changed the composition of the faunal community in ways that decreased the number of wildlife of the size class preferred by *N. americanus* and increased the populations of scavengers that compete with *N. americanus* for carrion, ultimately reducing the amount of carrion habitat available to *N. americanus*. Sikes and Raithel (2002) note that scavenger populations of coyotes, skunks, raccoons, and opossums have increased substantially over the past century, but do not provide information that suggests these trends are still relevant today. Jurzenski and Hoback (2011) state that "unfortunately, there are no published data comparing the number of vertebrate scavengers, including opossums, in areas with extant ABB populations and areas that no longer support these populations." In fact, Sikes and Raithel (2002) acknowledge that "…the factors that led to the decline of *N. americanus* may not all still be present."

Sikes and Raithel (2002) note that "most of the historical *N. americanus* collections, at least in the eastern portion of its range, occurred during the period when much of the landscape was highly agricultural." Therefore, it is difficult to establish that even intense changes in land use and land cover present a threat to the habitat of *N. americanus*.

To the extent that changes in land use and land cover may lead to changes in the composition of the vertebrate fauna community and affect the availability of *N. americanus* habitat, as summarized by Sikes and Raithel (2002), Table 4 shows how land use and land cover within the current known range of *N. americanus* have changed between 2001 and 2011, based on data provided by the National Land Cover Dataset (NLCD) (Homer et al. 2011). Land use/land cover classes that could provide suitable conditions for burying carrion include forests, shrub/scrub, grassland, pasture/hay, woody wetlands, and emergent woodlands; land use/land cover classes unlikely to provide suitable conditions for burying carrion include open water, developed uses, barren land, and cultivated crops. Between 2001 and 2011, approximately 195,092 acres of land within the current known range of the *N. americanus* (as defined by the 94 counties of occurrence shown in Figure 1) were converted from a potentially suitable land use/land cover class to a potentially unsuitable class – a change of only 0.4 percent over the decade. While USFWS (2008) points to the "numerous man-made lakes" created in Oklahoma and the ranking of Oklahoma as among the top

producing states for a number of agricultural products, neither these types of land use changes nor conversions to developed land uses have significantly altered the landscape within the current known range of *N. americanus* over the past decade. Therefore, there is no reason to suspect that any large-scale changes to the landscape that would significantly alter the composition of the vertebrate faunal community in ways that affect the abundance of carrion preferred by *N. americanus* have occurred in the recent past or are likely to occur in the future.

Table 4. Changes in potentially suitable land cover for use by *N. americanus* between 2001-2011 within the current range of the species.

LAND COVER CLASS	ACRES
Deciduous Forest	
No change	10,056,830
To other potentially suitable cover	292,270
To potentially unsuitable cover	26,284
Evergreen Forest	
No change	1,624,987
To other potentially suitable cover	254,927
To potentially unsuitable cover	2,305
Mixed Forest	
No change	634,301
To other potentially suitable cover	61,430
To potentially unsuitable cover	1,157
Shrub/Scrub	
No change	174,557
To other potentially suitable cover	46,732
To potentially unsuitable cover	4,210
Grassland/Herbaceous	
No change	22,694,003
To other potentially suitable cover	166,333
To potentially unsuitable cover	124,503
Grassland/Herbaceous	
No change	8,000,834
To other potentially suitable cover	31,764
To potentially unsuitable cover	25,748
Woody Wetlands	
No change	666,769
To other potentially suitable cover	26,228
To potentially unsuitable cover	3,371
Emergent Herbaceous Wetlands	
No change	508,298

LAND COVER CLASS	ACRES
To other potentially suitable cover	72,614
To potentially unsuitable cover	7,514
ALL POTENTIALLY SUITABLE LAND COVERS	
No change	**44,360,579 (97.5%)**
To other potentially suitable cover	**952,298 (2.1%)**
To potentially unsuitable cover	**195,092 (0.4%)**

As described above, there is no evidence that the current range of *N. americanus* is presently shrinking or that present or threatened destruction or modification of habitat is causing a downward trend in the abundance of *N. americanus*. Instead, the best available data shows that our understanding of the current range is actually expanding with the application of more survey effort using methods that are better at detecting the presence of the species (in fact, the USFWS just updated its recommended presence/absence survey protocols for *N. americanus* in May 2015, suggesting that improvements to increase detectability are still ongoing). The known contemporary range of the species has expanded 100-fold since listing in 1989. Therefore, there is no information to suggest that the habitat supporting *N. americanus* is presently or at risk of significant modification or curtailment in ways that would push the *N. americanus* towards extinction.

In fact, there are thousands of acres of public lands (parks, preserves, forests, grasslands, military reservations, and similar) and other private conservation lands (conservation banks and private nature preserves) within the currently known range of *N. americanus*. These lands are maintained in predominately a natural condition and support the fauna community used by *N. americanus* regardless of the listing status of *N. americanus*. The conservation value of these lands was not adequately considered in the 2008 5-year Status Review.

Amaral et al. (2005) estimated that all of the naturally occurring populations of *N. americanus* are demographically viable, projecting "little risk of single population extinction and no risk of metapopulation extinction over the next 50 years given estimated current conditions." Amaral et al. (2005) included consideration of "projected impacts from catastrophes and habitat loss" in their viability model. There is no evidence to suggest that the "estimated current conditions" and the allowances made for projected impacts modeled by Amaral et al. (2005) have changed since listing or are likely to change in ways that lead to a reduced carrying capacity within the current known range. Therefore, Listing Factor A is does not threaten *N. americanus*.

Listing Factor B (overutilization):

The USFWS has never identified overutilization as a threat to *N. americanus* (USFWS 2008). Even with increased survey effort, most contemporary collections of *N. americanus* follow USFWS-endorsed survey methods for *N. americanus* (USFWS 2010, USFWS 2014b) that call for the temporary capture and release of individuals and require specific protocols that minimize mortality (i.e., traps must be checked by mid-morning to prevent overheating and desiccation, use of trap designs that minimize capture of rainwater and access by scavengers, and shielding from bait that has become liquefied). Therefore, there is no current evidence that overutilization is a threat to the species.

Listing Factor C (disease or predation):

The USFWS acknowledges that there is no evidence of disease being a threat to *N. americanus* and, despite documentation that a number of different species have predated *N. americanus* (Jurzenski and Hoback 2011), "direct predation is not believed to be an important mortality factor" for the species

(USFWS 2008). Therefore, there is no information to indicate that Listing Factor C threatens the status of *N. americanus*.

Listing Factor D (inadequacy of existing regulatory mechanisms):

The USFWS acknowledged in the 2008 5-year Status Review that "in many situations it is difficult to apply the protective provisions under sections 7 and 9 of the ESA, because the use of baited pitfall traps may successfully capture beetles in locations where it is simply transient or present only opportunistically due to the carrion provided in the in the trap." With this statement, the USFWS admited that the conservation status of the *N. americanus* has not been substantially improved with the protections afforded by its endangered status under the ESA – again, pointing to the conclusion that the original listing was in error. Conversely, removal of those protections should not substantially decrease the conservation status of the species and suggests that the existing regulatory mechanisms that generally influence human uses of the landscape are sufficient to prevent this listing factor from threatening the continued existence of the species.

Nonetheless, there are a variety of conservation efforts currently in place that benefit the species. A total of approximately 5,144 acres are permanently protected for the explicit benefit of *N. americanus* in two conservation banks in Oklahoma, as well as a permittee-responsible mitigation reserve in Oklahoma (Common Ground 2015, Business Wire 2014).This includes the Muddy Boggy Conservation Bank, Common Ground Capital ABB Conservation Bank, and the Keystone McAlester Conservation Area. Additionally, there are many captive breeding and reintroduction efforts for *N. americanus* that released wild caught or captive raised beetles at seven sites across Missouri, Ohio, and Massachusetts in attempts to re-establish population in the wild (USFWS 2008). *Nicrophorus americanus* are reared at the St. Louis Zoo in St. Louis, Missouri; Roger Williams Park Zoo in Providence, Rhode Island; The Wilds in Ohio; and the Cincinnati Zoo in Cincinnati, Ohio (77 Fed. Reg. 16712). *Nicrophorus americanus* also benefit from the existence of public lands in Oklahoma, Arkansas, Rhode Island, Nebraska, and Texas. These lands and most likely others offer thousands of acres that are largely protected from disturbances that would render broad areas unsuitable for use by *N. americanus* and are generally maintained in a natural state

Listing Factor E (other natural or manmade factors):

USFWS (2008) addresses competition for carrion by scavengers as an "other natural or manmade factor," instead of as a form of habitat loss, and states that "competition for carrion can be a limiting factor" contributing to the decline of the species. However, while *N. americanus* are known to compete with vertebrate scavengers, invertebrate scavengers, and other carrion beetles, there is no indication that such competition is any more or less intense today than at the time of listing or that *N. americanus* populations are currently suffering declines as a result of such competition. No studies have been performed that demonstrate adverse population-level effects on *N. americanus* arising from competition for carrion, only that competitive interactions are part of the ecology of the species and that *N. americanus* individuals do not always outcompete other carrion users. However, these observations are not sufficient to establish that competition is a threat to the status of the species as a whole.

Furthermore, *N. americanus* has been successfully reared at several universities and zoos (USFWS 2008). Currently, captive ABB populations are maintained at the Roger Williams Park Zoo in Providence, Rhode Island; St. Louis Zoo in St. Louis, Missouri; The Wilds in Ohio; and the Cincinnati Zoo in Cincinnati, Ohio (USFWS 2012). Captive-reared and direct-translocated ABBs have been released at seven sites in attempts to re-establish populations in the wild. ABB reintroductions have been attempted in Missouri, Ohio, and Massachusetts (USFWS 2008). Not all reintroduction efforts have been successful, but researchers recently published a study that demonstrated that the most common (and, until recently, USFWS-advocated) method of marking individual beetles (i.e., by clipping or notching of the wing

coverings called "elyctra") significantly reduces the reproductive success of marked individuals by 90 percent (Hall et al. 2015). The wing coverings are important for sound production by individual beetles and are used in communication related to breeding, carcass defense, and brood rearing. Modifying wing coverings adversely affects *N. americanus* communication and may also alter the beetle's ability to move. Hall et al. (2015) note that most lab-raised *N. americanus* individuals used in reintroduction efforts have been so marked, which may be contributing factor in why some reintroductions have not been successful.

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Conversation Contents

Call

"Bernhardt, David" (b) (6) @ios.doi.gov>

From:	"Bernhardt, Davi (b) (6) @ios.doi.gov>
Sent:	Wed Aug 15 2018 16:51:52 GMT-0600 (MDT)
To:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Call

Ed: Do you have time for a conference call tomorrow on a water matter, or since you are on vacation, would you prefer I work directly with Scott.

David

--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
(202) 208-6291

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Edward McDonnell <edward.mcdonnell@sol.doi.gov>

From:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Sent:	Thu Aug 16 2018 06:58:18 GMT-0600 (MDT)
To:	"Bernhardt, Davi (b) (6) ios.doi.gov>
Subject:	Re: Call

Hi David,

I'd be happy to talk today. I'm still on leave but I have a phone call with OGE at 10:00 on the question of what constitutes a particular matter and how to characterize matters.

Is there a time other than that that you would like to talk?

Thanks,
Ed

Sent from my iPhone

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

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Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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On Aug 15, 2018, at 6:51 PM, Bernhardt, David <dwbernhardt@ios.doi.gov> wrote:

> Ed: Do you have time for a conference call tomorrow on a water matter, or since you

are on vacation, would you prefer I work directly with Scott.

David

--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
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Attachments:

/4. Invitation: Internal Call @ Thu Aug 16, 2018 12pm - 12:30pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.1 invite.ics
/4. Invitation: Internal Call @ Thu Aug 16, 2018 12pm - 12:30pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.2 invite.ics

David Bernhard (b) (6) t@ios.doi.gov>

From:	David Bernhardt <(b) (6) t@ios.doi.gov>
Sent:	Thu Aug 16 2018 07:33:22 GMT-0600 (MDT)
To:	edward.mcdonnell@sol.doi.gov
Subject:	Invitation: Internal Call @ Thu Aug 16, 2018 12pm - 12:30pm (EDT) (edward.mcdonnell@sol.doi.gov)
Attachments:	invite.ics invite.ics

Internal Call more details »

When Thu Aug 16, 2018 12pm – 12:30pm Eastern Time - New York

Where Call 202-208-6291 to be connected (map)

Calendar edward.mcdonnell@sol.doi.gov

Who
- (b) (6) ios.doi.gov - organizer
- gareth_rees@ios.doi.gov - creator
- edward.mcdonnell@sol.doi.gov

Going? **Yes** - **Maybe** - **No** more options »

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

[EXTERNAL] RE: State of Colorado Energy Luncheon - Ethics Review for Deputy Secretary Bernhardt

1 message

Carrie A. Hackenberger <HackenbergerC@api.org> Mon, Jul 23, 2018 at 1:43 PM
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Cc: "Connors, Margaret" <margaret.connors@sol.doi.gov>

Hi Ed,

Apologies, I just double checked and the food/beverage is $45 per person. There will not be a charge to the attendees of the lunch. Please let me know what other questions you may have.

Carrie Hackenberger

Operations Manager

Colorado Petroleum Council

A Division of API | 1660 Lincoln Street | Suite 2320 | Denver, CO 80264 | O: 720.214.7176 | C: 720.839.8774 | hackenbergerc@api.org | Follow us on Twitter & Facebook: @COPetroCouncil

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From: McDonnell, Edward <edward.mcdonnell@sol.doi.gov>
Sent: Monday, July 23, 2018 11:35 AM
To: Carrie A. Hackenberger <HackenbergerC@api.org>
Cc: Connors, Margaret <margaret.connors@sol.doi.gov>
Subject: State of Colorado Energy Luncheon - Ethics Review for Deputy Secretary Bernhardt

Hi Carrie,

I understand that Deputy Secretary Bernhardt will be a surrogate for Secretary Zinke at the luncheon. We are conducting an ethics review of the invitation for him to speak.

I further understand that the cost per person for food and beverages for the lunch is $43. Could you please advise as to whether any of the attendees are being charged to attend the luncheon?

Thanks very much,

Ed

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Ed McDonnell

Deputy Director, Ethics Law and Policy

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API Denver Event
7/26/18 Denver, CO

energy API | Colorado Petroleum Council
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STATE OF COLORADO ENERGY

PRESENTED BY THE COLORADO PETROLEUM COUNCIL

A LUNCHEON & DIALOGUE WITH



RYAN ZINKE
Secretary of the Interior



KEN SALAZAR
Former Secretary of the Interior



JACK GERARD
President & CEO
American Petroleum Institute

THURSDAY, JULY 26, 2018
11:30 AM NETWORKING
12:00 P.M. - 1:30 P.M.
PROGRAM

GRAND HYATT PINNACLE CLUB
555 17TH ST #3700,
DENVER, CO

RSVP BY JULY 13TH
TO CARRIE HACKENBERGER
AT HACKENBERGERC@API.ORG

Moderated by **TRACEE BENTLEY, Executive Director,** Colorado Petroleum Council

This event was designed to comply with applicable Colorado gifts & ethics laws, including Amendment 41
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Official Non-Profit Activity Request Form

This form is to be used for requests for official participation in events or activities with 501(c)(4) social welfare, 501(c)(6) business, and other similar non-profit organizations for the President, Vice President, White House staff, and Cabinet Officials.

This form must be completed in addition to any scheduling forms required by the official's scheduling office and should be submitted to Office of Political Affairs.

Requested Attendee Name
Secretary Ryan Zinke

Requester Information	
Organization:	Colorado Petroleum Council/American Petroleum Institute
Purpose of Organization:	Represents all facets of the oil and natural gas industry
Organization Affiliates:	American Petroleum Institute
Organization Website:	Api.org
Coordinator Name & Title:	Tracee Bentley, Executive Director, Colorado Petroleum Council
Contact Information:	Bentleyt@api.org Office: 720-214-7176 Cell: 970-412-3386

Event Information	
Event Name:	State of Colorado Energy Luncheon
Event Description:	Panel discussion on western energy issues. The panel will discuss topics such as what the future of energy production looks like in the west, role of industry, federal government, and states. Audience: We expect 300-400 people to attend, many Industry and Business Executives, elected officials, media. It is invite only.
Event Type: *E.g., Photo Op, Fundraiser, Meal, Meeting, etc.*	Luncheon Panel discussion
Date, Time & Location: *Provide information about travel if outside D.C.*	Thursday, July 26th Time: 11:30am – 1:00pm Place: Grand Hyatt, Pinnacle Club, Denver, CO
Other Organizations or Officials Participating:	Jack Gerard, CEO of API Ken Salazar, former Secretary of Interior
Projected Attendees: *List notable attendees, type, and expected number*	We expect 300-400 people to attend, many energy Industry and Business Executives, elected officials, media. It is invite only.

Additional Event Information	
Political Activities? *If yes, describe with specificity*	n/a
Fundraising Activity? *If yes, describe type and beneficiary*	n/a
Entertainment Activity? *If yes, describe in detail for ethics review*	Luncheon (plated lunch), panel will be primary piece of event with introductory comments by Tracee Bentley.
Remarks Requested? *Include expected speaking program*	Yes, each panelist will provide answers to a prepared list of questions asked by the moderator.
Media Plan:	Press advisory prior to event and press release following the event
Decision Deadline:	May 31, 2018

Invitations, Promotional Materials, Etc.

Please attach any additional information about event and include draft invitations, promotional materials, reply devices, press releases, or other accompanying items that may be used in connection with event. Clearly mark all such items as *DRAFT* before submitting.
Absolutely no materials may be distributed concerning activity with any official's name, title, or position on them without being approved in writing in advance.

Making unapproved announcements and/or distributing unapproved materials concerning officials' attendance may result in rejection or cancellation of event.

Organization Legal Sign-Off

All 501(c)(4) activity requests must have been reviewed and approved by the organization's legal counsel prior to being submitted for White House review. This includes review of this form, proposed invitation, promotional materials, disclaimers, and any other accompanying items.

Signature: _____

Counsel Name: _____

Counsel Contact Information: _____

_____

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Notes	

Getto, Leila <leila_getto@ios.doi.gov>

[EXTERNAL] Request for Secretary Zinke

Carrie A. Hackenberger <HackenbergerC@api.org> Mon, May 7, 2018 at 3:28 PM
To: "leila_getto@ios.doi.gov" <leila_getto@ios.doi.gov>

Hi Ms. Leila Getto,

My name is Carrie Hackenberger and I work for the American Petroleum Institute out of our Colorado Office. We are hosting a luncheon event in Colorado on July 26th called the State of Colorado Energy. We are expecting approximately 300-400 people in attendance, as this will be the 5th time we have held this event and the attendance has grown each year . This lunch will contain a panel with API's President and CEO Jack Gerard and we would like to cordially invite Secretary Zinke to participate in the panel as well. We had received the attached form and were told to fill it out, but I wanted to be sure this was the right process or if there was any additional forms that needed to be included in order to make this request formally. Would you please advise if there is any additional information or forms I need to provide? Thank you in advance and I look forward to hearing from you soon.

Best regards,

Carrie Hackenberger

Operations Manager

Colorado Petroleum Council

A Division of API | 1660 Lincoln Street | Suite 2320 | Denver, CO 80264 | O: 720.214.7176 | C: 720.839.8774 | hackenbergerc@api.org | Follow us on Twitter & Facebook: @COPetroCouncil

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Official Policy Activity Request Form_American Petroleum Institute_Secretary Zinke.pdf
112K

COLORADO OIL & GAS ASSOCIATION



THE ENERGY SUMMIT

CLEANER BETTER FURTHER SAFER

AUGUST 22ND - 24TH, 2017
THE COLORADO CONVENTION CENTER
DENVER, CO

#COGA2017

SCHEDULE *at a glance*

TUESDAY, AUGUST 22ND, 2017

7:15 AM-5:00 PM	REGISTRATION OPEN
7:15 AM-5:00 PM	EXPO HALL OPEN
7:15 AM-9:00 AM	HOT BREAKFAST AND NETWORKING IN EXPO HALL
8:15 AM-9:45 AM	IMPROVING SUCCESS THROUGH LESSONS LEARNED IN PREMIER PLAYS: THE PERMIAN AND DJ BASIN DOMINANCE
9:45 AM-10:45 AM	BETTER FINANCIAL STRATEGY: THE EVOLUTION OF CAPITAL IN TODAY'S WORLD
10:45 AM-11:45 AM	NETWORKING BREAK IN EXPO HALL
11:00 AM-11:30 AM	COLORADO STATE LEGISLATOR Q&A FORUM IN THE EXPO HALL EXPLORATORY
11:45 AM-1:15 PM	KEYNOTE LUNCHEON–GLOBALIZATION'S TILTED AXIS
1:15 PM-1:45 PM	NETWORKING BREAK IN EXPO HALL
1:20 PM–1:40 PM	USING DATA TO DRIVE BUSINESS FORWARD IN THE EXPO HALL EXPLORATORY
1:45 PM-3:00 PM	CRUNCH TIME: HOW BIG DATA AND PREDICTIVE ANALYTICS ARE TAKING THE INDUSTRY FURTHER
3:00 PM-3:30 PM	NETWORKING BREAK IN EXPO HALL
3:05 PM–3:25 PM	THE WEST SLOPE TO THE WEST COAST IN THE EXPO HALL EXPLORATORY
3:30 PM-4:45 PM	MARKETS OVERVIEW: BETTER POSITIONING OF NATURAL GAS
5:00 PM-7:30 PM	OPENING NIGHT PARTY–CHAMBERS GRANT SALON

Advanced ticket purchase required. Location at 14th and Curtis Streets. Sponsored by Chippewa Resources Incorporated & CH2M

WEDNESDAY AUGUST 23RD, 2017

7:30 AM-5:45 PM	REGISTRATION OPEN
7:30 AM-5:45 PM	EXPO HALL OPEN
7:30 AM-9:00 AM	HOT BREAKFAST AND NETWORKING IN EXPO HALL
8:30 AM-9:45 AM	MAXIMIZING MILLENNIALS: HOW TO MANAGE THE GENERATIONAL SHIFTS IN THE WORKPLACE
9:45 AM-10:30 AM	THE PROGRESSION OF SAFETY: FROM PROCESS TO CULTURE
10:30 AM-11:30 AM	NETWORKING BREAK IN EXPO HALL
10:45 AM–11:15 AM	GOT DRONES? IN THE EXPO HALL EXPLORATORY
11:30 AM-1:00 PM	SPOTLIGHT LUNCHEON: AN INTERIOR DIALOGUE
1:00 PM-1:30 PM	NETWORKING BREAK IN EXPO HALL
1:05 PM–1:45 PM	COALITION BUILDING: HOW PIPELINERS LAY THE GROUNDWORK IN THE EXPO HALL EXPLORATORY
1:30 PM-2:45 PM	KEYNOTE: HOW TO BE WRONG ABOUT THE ENERGY FUTURE IN NINE WORDS
2:45 PM-3:15 PM	NETWORKING BREAK IN EXPO HALL
2:45 PM-3:15 PM	FIRST TIME ATTENDEE NETWORKING EVENT IN EXPO HALL

Organized by the COGA Connect Committee

3:15 PM-4:35 PM	OIL MARKETS: OUT OF THE WOODS?
4:30 PM-5:45 PM	NETWORKING HAPPY HOUR IN EXPO HALL

Open bar hosted by the EnGen Alumni Network

THURSDAY, AUGUST 24TH, 2017

7:00 AM-12:45 PM	REGISTRATION OPEN
7:00 AM-12:45 PM	EXPO HALL OPEN
7:00 AM-8:30 AM	HOT BREAKFAST AND NETWORKING IN EXPO HALL
8:00 AM-9:15 AM	LNG: ENDURING PROJECTS & EXPANDING MARKETS
9:15 AM-10:30 AM	TECHNICAL ADVANCEMENTS IN ENVIRONMENTAL STEWARDSHIP
10:30 AM-11:30 PM	NETWORKING BREAK IN EXPO HALL AND BALLOON DROP
10:35 AM	THE ENERGY SUMMIT BALLOON DROP IN EXPO HALL
10:45 AM–11:15 AM	MARKET ANALYTICS UPDATE IN THE EXPO HALL'S EXPLORATORY
11:30 AM-12:45 PM	BUSINESS POWER LUNCHEON: THE STRATEGY AND FUTURE OF AMERICA'S ENERGY PLAN

DAY 1 TUESDAY

august 22, 2017

7:15 AM-5:00 PM ▸ REGISTRATION OPEN

7:15 AM-5:00 PM ▸ EXPO HALL OPEN

7:15 AM-9:00 AM ▸ HOT BREAKFAST AND NETWORKING IN EXPO HALL

8:15 AM-9:45 AM ▸ IMPROVING SUCCESS THROUGH LESSONS LEARNED IN PREMIER PLAYS: THE PERMIAN AND DJ BASIN DOMINANCE

As companies rebound from the downturn, strategies to align operations within the Permian and Denver Julesburg basins are being utilized for success. What are the lessons learned from each basin that can benefit the other and can be applied to other basins? From activism and economics, to operational and technical advancements, how do the two areas compare and what do they tell us about driving the industry further than before?

SPEAKERS INCLUDE:

Honorable Michael Hancock, Mayor, City & County of Denver–Welcome Remarks
Bart Brookman, President and CEO, PDC Energy
Dave Stover, Chairman, President & CEO, Noble Energy
Alan Thomson, Senior Partner & Managing Director, Global Leader Energy Practice, The Boston Consulting Group (moderator)

9:45 AM-10:45 AM ▸ BETTER FINANCIAL STRATEGY: THE EVOLUTION OF CAPITAL IN TODAY'S WORLD

From new IPOs to crowdfunding, how is raising capital in a tech world evolving to meet the times? How has private equity adapted to the rapid pace of change in political, regulatory, and operational developments? How are conventional financing strategies best deployed in the current price environment?

SPEAKERS INCLUDE:

Roger Biemans, CEO & President, Vantage Energy Acquisition Corp
Joe Jaggers, Chairman, President, & CEO, Jagged Peak Energy
Tom Petrie, Chairman, Petrie Partners

10:45 AM-11:45 AM ▸ NETWORKING BREAK IN EXPO HALL

11:00-11:30 AM ▸ COLORADO STATE LEGISLATOR Q&A FORUM IN THE EXPO HALL EXPLORATORY

11:30 AM ▸ DOORS OPEN TO MILE HIGH BALLROOM

11:45 AM-1:15 PM ▸ KEYNOTE LUNCHEON – GLOBALIZATION'S TILTED AXIS

Join Dr. Barnett for a tour d'horizon of the world's regions, analyzing their current conflict dynamics. He will present regional issues within the larger context of globalization's shift from east-west integration to north-south tensions, identifying a number of global trends that are accelerating this unprecedented tilting of the world's primary vectors of economic change.

SPEAKERS INCLUDE:

Tom Barnett, Partner, Barnett Consulting LLC

COGA Summit Award Presentation - Industry Advocate of the Year

1:15 PM-1:45 PM ▸ NETWORKING BREAK IN EXPO HALL

1:20 PM-1:40 PM ▸ USING DATA TO DRIVE BUSINESS FORWARD IN THE EXPO HALL'S EXPLORATORY

1:45 PM-3:00 PM ▸ CRUNCH TIME: HOW BIG DATA AND PREDICTIVE ANALYTICS ARE TAKING THE INDUSTRY FURTHER

With so much data, from well logs and production reports to 3-D seismic and drilling data, how are companies utilizing advanced analytics to optimize their operations?

SPEAKERS INCLUDE:

Binu Mathew, Global Head of Digital Products, GE Oil & Gas
Donald Paul, Executive Director, USC Energy Institute, William M. Keck Chair of Energy Resources, Research Professor of Engineering
Brian Pugh, Chief Operations Officer Production, BPL48
Dr. Mehrzad Mahdavi, Vice President, Digital Solutions, Weatherford

3:00 PM-3:30 PM ▸ NETWORKING BREAK IN EXPO HALL

3:05 PM-3:25 PM ▸ THE WEST SLOPE TO THE WEST COAST IN THE EXPO HALL EXPLORATORY

3:30 PM-4:45 PM ▸ MARKETS OVERVIEW: BETTER POSITIONING OF NATURAL GAS

From supply, demand and transportation dynamics, what are the marketplace trends and fundamental basin economics around the world for natural gas?

Jim Duncan, Director, Commodity Market Research, ConocoPhillips
Scott Moore, Senior Vice President, Permian Operations and E&P Marketing, Anadarko Petroleum Corporation

5:00 PM-7:30 PM ▸ OPENING NIGHT PARTY

Join us at the Chambers Grant Salon at the Ellie Caulkins Opera House for COGA's biggest networking party of the year, and the best industry event of the summer! Advanced ticket purchase required. Location at 14th and Curtis Streets.

SPONSORED BY: ch2m. CHIPPEWA RESOURCES

DAY 2 WEDNESDAY

august 23, 2017

7:30 AM-5:45 PM ▸ REGISTRATION OPEN

7:30 AM-5:45 PM ▸ EXPO HALL OPEN

7:30 AM-9:00 AM ▸ HOT BREAKFAST AND NETWORKING IN EXPO HALL

8:30 AM-9:45 AM ▸ EXECUTIVE FORUM PANEL: MAXIMIZING MILLENNIALS: HOW TO MANAGE THE GENERATIONAL SHIFTS IN THE WORKPLACE

Whether it's a generation, or a mindset, the workplace is rapidly changing. From cultural shifts to evolving expectations, how are future leaders preparing to take industry to the next level and how are companies maximizing their development of this great new resource?

SPEAKERS INCLUDE:

Kelly Brough, President & CEO, Denver Metro Chamber of Commerce (Special Remarks)
Tamara Bray, GVP & Chief Human Resource Officer, DCP Midstream
Tony Buchanon, President & CEO, Crestone Peak Resources
Audrey Carlson, MarCom Manager, Liberty Oilfield Services
Sarah Sandberg, Chief Operating Officer & Conference Director, COGA

9:45 AM-10:30 AM ▸ THE PROGRESSION OF SAFETY: FROM PROCESS TO CULTURE

How are industry leaders using best practices and cultural shifts to elevate safety in the workplace and address stakeholder concerns?

SPEAKERS INCLUDE:

Christina Henderson, Director, U.S. Pipelines, Suncor Energy USA
Britt Howard, Vice President, Enterprise Director of Health, Safety, Security, Environment and Quality, CH2M
Marc McGill, Director EHSR, Global Offshore, Noble Energy, Inc.
Dr. Jade Strong, Managing Director and Founder, Mergentis

10:30 AM-11:30 AM ▸ NETWORKING BREAK IN EXPO HALL

10:45 AM-11:15 AM ▸ GOT DRONES? IN THE EXPO HALL EXPLORATORY

11:15 AM ▸ DOORS OPEN TO MILE HIGH BALLROOM

11:30 AM-1:00 PM ▸ SPOTLIGHT LUNCHEON: AN INTERIOR DIALOG

SPEAKERS INCLUDE:

Gale Norton, President, Norton Regulatory Strategies and Former Secretary of the Interior
Special Guest, Department of the Interior

1:00 PM-1:30 PM ▸ NETWORKING BREAK IN EXPO HALL

1:05 PM-1:45 PM ▸ COALITION BUILDING: HOW PIPELINERS LAY THE GROUNDWORK IN THE EXPO HALL EXPLORATORY

1:30 PM-2:45 PM ▸ KEYNOTE: HOW TO BE WRONG ABOUT THE ENERGY FUTURE IN NINE WORDS

Significant government control. Limited data quality. Long infrastructure life.

SPEAKERS INCLUDE:

Mr. Kevin Book, Managing Director, ClearView Energy Partners

COGA Summit Award Presentation – Emerging Leader of the Year

2:45 PM-3:15 PM ▸ NETWORKING BREAK IN EXPO HALL

2:45 PM-3:15 PM ▸ 1ST TIME ATTENDEE NETWORKING EVENT IN EXPO HALL

In the Expo Hall Exploratory, hosted by the COGA Connect Committee

3:15 PM-4:35 PM ▸ OIL MARKETS: OUT OF THE WOODS?

What are the latest trends in global market balances and the role of US and Rockies supply? How have transportation, refining and infrastructure challenges and opportunities evolved?

SPEAKERS INCLUDE:

Rusty Braziel, President & Principal Energy Markets Consultant, RBN Energy
Trisha Curtis, President and Co-founder, PetroNerds

4:30 PM-5:45 PM ▸ NETWORKING HAPPY HOUR IN EXPO HALL

Open bar hosted by the EnGen Alumni

DID YOU KNOW?

IF YOUR COMPANY IS A COGA MEMBER ALL EMPLOYEES ARE CONSIDERED MEMBERS FOR THE WHOLE YEAR?
GET INVOLVED BY SIGNING UP FOR COGA NEWS AT WWW.COGA.ORG

DAY 3 · THURSDAY

august 24, 2017

7:00 AM-12:45 PM ▸ REGISTRATION OPEN

7:00 AM-12:45 PM ▸ EXPO HALL OPEN

7:00 AM-8:30 AM ▸ HOT BREAKFAST AND NETWORKING IN EXPO HALL

8:00 AM-9:15 AM ▸ LNG: ENDURING PROJECTS & EXPANDING MARKETS

How can American LNG compete in a world market? What strategies ensure current LNG projects will be taken to maturity? How can gas from the West Slope of the Rockies supply Asian markets?

SPEAKERS INCLUDE:

Bob Braddock, Senior Project Advisor, Jordan Cove Energy Project L.P.
Dawn Constantin, SVP, Marketing & Regulatory Affairs, BP Energy Company
Greg Vesey, Managing Director & CEO, LNG Limited
John Harpole, President, Mercator Energy LLC

9:15 AM-10:30 AM ▸ TECHNICAL ADVANCEMENTS IN ENVIRONMENTAL STEWARDSHIP

An examination of how industry's constant drive to innovate has resulted in pioneering technology that helps the environment, reduces industry's footprint, and improves the value chain from the upstream sector to the consumer.

SPEAKERS INCLUDE:

Erik Anglund, Water Management Engineer, Anadarko
Jeremy Boak, Director, Oklahoma Geologic Survey
Joe Lima, Director, Environmental Sustainability, Schlumberger
Bryan Willson, Executive Director, Colorado State University Energy Institute

10.30 AM-11:30 AM ▸ NETWORKING BREAK IN EXPO HALL

10.35 AM ▸ THE ENERGY SUMMIT BALLOON DROP IN THE EXPO HALL

10:45 AM – 11:15 AM ▸ MARKET ANALYTICS UPDATE IN THE EXPO HALL'S EXPLORATORY

11:15 AM ▸ DOORS OPEN TO MILE HIGH BALLROOM

11:30 AM-12:45 PM ▸ BUSINESS POWER LUNCHEON: THE STRATEGY AND FUTURE OF AMERICA'S ENERGY PLAN

SPEAKERS INCLUDE:

Donna Lynne, Lt. Governor of Colorado (Special Remarks)
Honorable Michael Bennet, U.S. Senator, State of Coloardo
Honorable Cory Gardner, U.S. Senator, State of Coloardo
Scott Desmarais, Partner, McKinsey & Company Inc.

COGA Summit Award Presentation - Lifetime Achievement Award

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EnGen is a one year, curriculum-based leadership development program for COGA members. With the help of industry leaders, the thoughtfully crafted curriculum provides participants with a comprehensive approach to professional and personal development through a series of educational seminars, social networking events, and community outreach projects. We are seeking current and future industry leaders who will meaningfully impact the oil and gas industry and the state of Colorado in the years ahead. We encourage ambitious, dedicated, and strong emerging leaders apply.

LEARN MORE AT
www.cogaengen.org

KNOWLEDGE WITH DIRECTION







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CONFERENCE EXHIBITORS

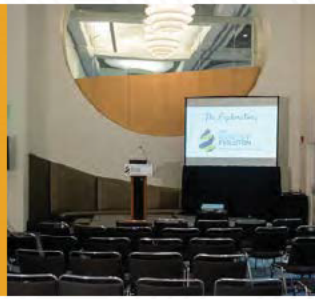
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CONFERENCE CO-CHAIR



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COGA PRESIDENT & CEO



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2017 COGA SUMMIT AWARD WINNERS



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45 COGA Officers, Directors, and Staff

DID YOU KNOW?

TICKETS ARE STILL AVAILABLE FOR THE TUESDAY EVENING OPENING NIGHT PARTY AT OUR REGISTRATION AREA OR ONSITE AT THE EVENT?

Get More Out of Your Membership
JOIN A COGA COMMITTEE

To maintain a unified and effective strategy, COGA facilitates numerous committees which track and engage on regulatory, legislative, and legal issues affecting the oil and gas industry. Our robust committee structure provides critical member input, expertise, and insight into COGA strategies and activities. COGA strongly encourages participation and engagement in our standing committees.

CURRENT COMMITTEES

COGA Connect Committee
Environmental, Health, Safety and Regulatory Committees (EHSR)
Legal, Legislative, and Regulatory Committee (LL&R)
Local Regulatory Committee (LRC)
Community Outreach & Investment Committee (COI)
Legal Committee
Markets Forum
Midstream Committee
Operational Safety Committee
Political Action Committee
TES Conference Steering Committee
Tax Committee
Vendor Engagement Committee

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THE ENERGY SUMMIT

CLEANER BETTER FURTHER SAFER

The technological advances and strategic thinking that led to a surge in U.S. production and ultimately lower commodity prices are now ushering in a new period of innovation and development. The industry emerging from the recent downturn is better equipped to face the challenges of a new price environment and global market era.

To highlight these developments, the Energy Summit proudly enters its 29th year with a focus on "Cleaner, Better, Further, Safer." Over three days, our speakers will explore the industry's commitment to a **cleaner** energy future, strategies employed to position companies for **better** success, technological advances that take us **further** to energy security, and continuing implementation of practices that keep our industry **safer** than ever before. Highlights include:

- An examination and comparison of industry's hottest plays in the Permian and DJ Basins;
- An overview of innovation in finding financial fuel for a new round of industry growth;
- Analyses of oil and gas markets from industry's top analysts, including considerations of pricing, basin economics, transportation and export for oil, gas, NGLs, and LNG;
- Dialogue from industry executives on managing new workplace dynamics from mergers to millennials;
- An assessment of how industry is using analytics to optimize operations;
- An examination of how industry's constant drive to innovate has resulted in pioneering technology that helps the environment, reduces industry's footprint, and improves the value chain from the upstream sector to the consumer;
- A review of industry's relentless focus on improving safety and the role of both process and culture in creating a safer work and community environment;
- A discussion on America's energy plan from our country's top leaders; *and*
- Keynote speeches from top thought leaders.

In addition to these presentations, our exhibit hall and related events will provide as always an unparalleled opportunity to connect and network with industry peers and leading service providers.

Join us to learn how the industry is evolving "Cleaner, Better, Further, Safer".







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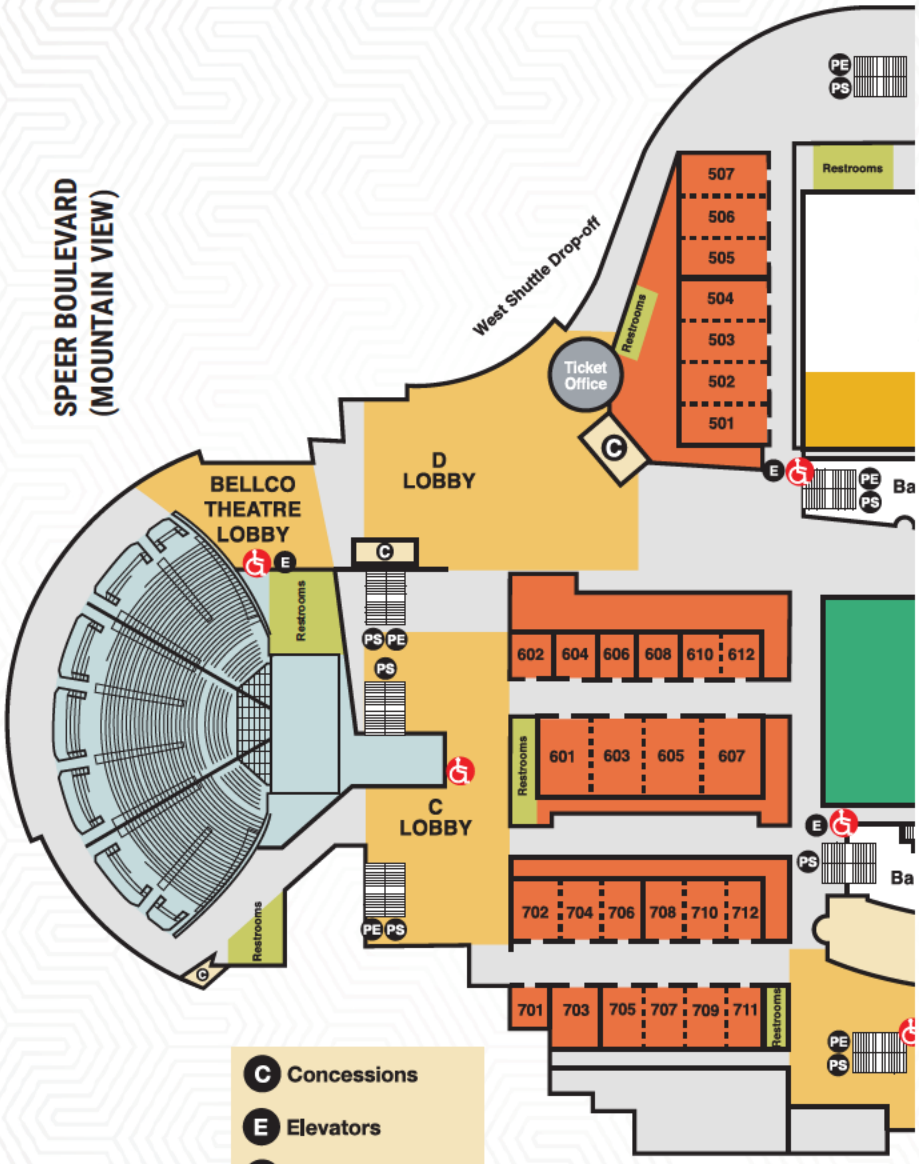
- DJ Basin Focused Program Provides Significant Value Creation Opportunity
- Attractive Returns from Extended Reach Lateral "XRL" Program
- Invested in the Continued Economic Vitality of Area Nonprofits and Communities Where We Operate

Bill Barrett Corporation

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conference *map*





Denver, **Here We Come.**



Since early 2015, when our Lower 48 business began operating as a separate entity, we have achieved significant financial and operational improvements across our portfolio, largely by using innovative drilling and completions techniques. We have increased production and acquired new acreage - all while maintaining an unwavering commitment to safety and to the environment.

Being a good neighbor takes on a whole new meaning for us as Denver is set to become home in 2018. **We look forward to joining Colorado's rich and vibrant energy community.**



The new BP Lower 48 headquarters — which will cover Colorado, New Mexico, Oklahoma, Texas and Wyoming — is expected to open in 2018 along the North Platte River in the heart of downtown Denver.

bp Lower 48

To learn more, visit:
bp.com/L48



welcome

from the mayor of denver

michael hancock

On behalf of the residents of the City and County of Denver, welcome to the "Mile High City."

This is an important time in world history as it relates to the development and use of energy. Over the next several days, you will have the opportunity to share information on the latest in industry trends, evaluate the challenges in the industry, and shape the direction of delivering reliable sources of energy that are clean and safe. Thank you for the great work that you are doing.

While you are here, I hope you will have an opportunity to enjoy some of the many amenities that our city has to offer. Denver's downtown is one of the nation's most walkable and boasts a variety of attractions, including the nation's second largest performing arts complex, three art museums, three sports stadiums, a U.S. Mint and more than 300 restaurants.

Again, welcome to Denver, have an informative and enjoyable time, and please plan to return soon.

Respectfully,

Michael B. Hancock
Mayor



COGA Elite Cycling carries the message of responsible energy development across the state of Colorado while supporting tomorrow's leaders with guidance and structure.

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LEARN MORE ABOUT THE TEAM:

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Highlands Ranch,
Colorado 80129

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Letter
from the Conference Director
sarah sandberg

Welcome to the 29th Annual Energy Summit!

We are thrilled to have you join us for what will certainly be our best conference, expo, and experience yet! Our steering committee, led by Chip Rimer and David Posner, has gathered industry thought leaders who will test our assumptions, reframe our challenges, and discuss solutions and outcomes to industry's most pressing issues.

To best take advantage of the next three days, I offer my top ten list of not-to-be-missed recommendations:

1. Have Fun While Networking: From Opening Night Party on Tuesday, the Expo Happy Hour on Wednesday, or all the lunches and breaks in between, have fun and meet someone new at each opportunity. Also, don't forget that all registered attendees are listed online for your reference.
2. Take a Deep Dive: Several times a day, we are featuring in-depth presentations on new technology and regulatory developments in our Exploratory. These are free to all members and attendees in the expo hall.
3. Learn: Join us for all of our panels and keynotes, and ask questions! Get as much as you can out of these three days. There are blank note-taking pages in the back of this program book to capture all of the insights.
4. Don't Just Grab Swag: Explore the expo hall and meet our vendors. They will connect you to new products, techniques, and expertise to ensure continual improvements in our operations and strategies.
5. Meet Your Legislators: Join a large group of State Legislators on Tuesday for an open Q&A in the Exploratory. Gain access to policymakers and hear what is coming around the bend.
6. Meet the Speakers: We hold multiple speaker meet-and-greets throughout the day at the COGA booth. Check with our booth for today's schedule.
7. Get Social: Join us on social media using #COGA2017.
8. Get Your Balloon Game On: Remember that one year we did not have the balloon drop? Don't worry, we learned our lesson. Dozens of prizes will be raining down on Thursday, be there to win big!
9. Be Present: We have plenty of breaks for emails and calls. When you are at the Energy Summit, take full advantage of every moment.
10. Keep It Going: This is not just a conference; it is the beginning of a conversation. The trends we will discuss this week have created challenges and opportunities that the informed, engaged, and ambitious will solve and seize. The future of this industry is up to you!
11. Bonus – Thank a COGA Staffer: Our team works year-round to ensure the best conference ever and we are so proud of their ability to create the West's best energy event!

Warmly,

Sarah Sandberg
Conference Director
Chief Operating Officer, Colorado Oil & Gas Association

Sign up for COGA's bi-weekly newsletter and stay up to date on industry news, jobs, and COGA events!



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Letter
from the President & CEO
dan haley

Welcome from the President & CEO

On behalf of our board of directors, staff and membership, I am pleased and honored to welcome you to the 29th annual Colorado Oil & Gas Association Energy Summit. We have an exciting week on tap and we are so pleased you have decided to join us. Our theme this year -- Cleaner, Better, Further, Safer – reflects the amazing gains our industry has made in recent years in technology and innovation but also acknowledges our need to build upon those successes and continue to improve.

As our members continue to grapple with lower than desired commodity prices, uncertain markets and a fragile recovery, it is important that we renew our focus on where we're going as an industry, how we're going to get there and what matters – not just to our shareholders and investors but to our workforce and the communities where we live and operate.

We need to continue creating a cleaner energy future for our communities and a safer industry for our workers and neighbors. We also must explore new ways to go further in our technology and systems so we can continue to build a better industry that benefits our economy and our country. The products that you develop, produce and deliver each day help to make our lives infinitely better, whether it's the abundant and affordable natural gas that's helping to clean our air, or petroleum, which we rely on to fuel our cars and trucks and to create countless products we use each day. We should be proud of this industry and the contributions that all of you make for the betterment of society. We can never lose sight of that as we spend this week learning, networking and charting our path forward.

As always, I'm so grateful for our sponsors who make this conference possible, our members who support COGA throughout the year, and for you. Thank you for joining us. Let's move forward together.

A_ain, welcome!

Da- Hale-
President & CEO
Colorado Oil & Gas Association

Effective Outreach to Elected Officials

COGA LEAD


Field Tours


LEAD Connect


Day at the Capitol


Legislative Seminars



Weekly Newsletter

The COGA LEAD program works to increase outreach to state and local elected officials, and their staff. The program is designed to give state lawmakers, local elected officials, business leaders, and other stakeholders access to the latest information, studies, and news about the oil and gas industry.

Email COGALEAD@coga.org for more information



Our mission is to build an energy company that works in partnership with the communities where we operate. By embracing and safely driving change through innovation, our operations define us.

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EXTRACTION
Oil & Gas

We proudly support the Rocky Mountain Energy Summit.



Letter
from the Conference Co-Chair
chip rimer

A Welcome from Chip Rimer, Energy Summit Chair

On behalf of the board, staff and members of the Colorado Oil and Gas Association, welcome to the 2017 Energy Summit. COGA has hosted this event for 29 years, and I am honored to play a role in carrying on this event's strong tradition of bringing together leaders in the energy sector to reflect on the collective opportunities and challenges we face.

This year's theme – Cleaner, Better, Further, Safer – reflects both where we are, and where we want to go as an industry. In a larger sense, it represents the aspirations we all have to innovate and advance all aspects of our business and reflects our enduring desire to innovate, improve and overcome challenges.

I am proud to be part of an industry that does important work every day to provide Americans, and our economy, with the energy needed to prosper and live our daily lives. I am also proud to be working in the great state of Colorado, where we continue to demonstrate that energy development and a healthy environment can coexist.

While we once again find ourselves facing energy market and political headwinds, these are not new challenges for us. We have come a long way over the last few years and we must continue working together to demonstrate, to our supporters and detractors alike, that we can safely and responsibly deliver the energy resources essential for heating our homes and businesses, producing and cooking our food, powering our vehicles, and charging our phones. We must also continue to show the citizens and communities in this state why we are here, what our industry does and why it matters. And each of us has a role to play in delivering these important messages.

I am looking forward to a highly successful Energy Summit. To all those participating, and to all of those who have organized this event, thank you very much for doing your part to make it a memorable one.

Sincerely,

Chip Rimer
2017 Energy Summit Co-Chair
Colorado Oil and Gas Association

Thank You to our Business Coalition Partners

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THE ENERGY SUMMIT
CLEANER BETTER FURTHER SAFER



PDC ENERGY

PDC Energy is proud to sponsor the 2017 Energy Summit.

PDC Energy works daily to develop resources in a way that's cleaner, better and safer while ensuring that we don't lose sight of our commitment to the communities where we operate.

This year, on our annual Energizing Our Community service day, roughly 85% of PDC employees volunteered for local organizations dedicated to helping those in need.

At PDC Energy, community matters.



Letter
from the Conference Co-Chair

david posner

'wan' 'o a ' 'my we'come 'o 2017 The Energy Summit. I am honored to serve as the co-chair for this year's conference with my fellow co-chair Chip Rimer. I have been involved as one of the organizers of the conference essentially since its inception, now almost 30 years ago. The conference founder, and my good friend Fred Julander approached me then with his vision of what the conference should and could be.

Over these many years, the conference has grown and flourished. It has changed, matured, and spread its wings. However, the fundamental principles and standards Fred established way back then are still clearly visible. It's a place for honest and open dialogue on the industry's challenges and opportunities, its strengths and vulnerabilities. We bring together some of the most thoughtful leaders within the industry and from other segments of the energy and environmental communities to challenge ourselves.

In the context of the conference's history, the theme this year is especially appropriate- CLEANER BETTER FURTHER SAFER. It captures the heart of what the conference strives to inspire To be successful, we must push our companies to new levels in each of these dimensions. In addition to constantly reducing our environmental impacts, we embrace the environmental benefits responsible development and efficient use of natural gas can bring, especially in combination with renewable sources. Technology and innovation are expanding the resource base and making development more cost effective. Safer operations are fundamental to all of the industry's accomplishments. This year the never-ending challenge for the industry to become safer is especially important.

Another change this year is our conference name The Energy Summit. While the Rockies remains our heart and soul, we have realized that the relevance and scope of the conference reaches across the country and beyond our region.

A conference of this quality and scope couldn't happen without an amazing and talented staff. Thanks to Sarah Sandberg and the entire COGA team for their fantastic work.

I hope you enjoy the conference and afterwards personally embrace the theme to make everything you do Cleaner Better Further Safer.

David M Posner
2017 Energy Summit Co-Chair

COGA needs your help to create an industry-wide Community Impact Report

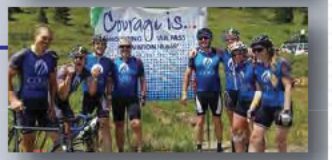
The uniform and consistent messaging of this comprehensive report will highlight industry's social responsibility and celebrate giving back.

At the end of the year, COGA will contact your company or organization requesting details of **your 2017 efforts and how you made a positive impact on Colorado's communities.**

For more information, contact info@coga.org









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YOU CAN WIN FABULOUS PRIZES IN THE EXPO BALLOON DROP?! BE IN THE EXPO AT 10:30AM ON THURSDAY TO WIN BIG!







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Noble Energy's guiding principle – "Energizing the World, Bettering People's Lives" – is why we're committed to giving back to the communities where we live, work and operate. We're working hard everyday to live up to our name.

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Letter
from the COGA Chairman

john mummery

Welcome to COGA's 2017 Energy Summit. COGA has elevated what was the Rocky Mountain Energy Summit into what is now recognized as a national Energy Summit. This advancement reflects the history of COGA so well; from a local group of DJ Basin operators wanting to engage with the greater public on oil and gas growth in Colorado, to what COGA is today – one of the nation's premier state oil and gas trade organizations. COGA has developed a reputation amongst Colorado municipal, county, and state policy makers as the place to get factual information about the positive economic impact oil and gas has on the state of Colorado. When an issue of how to promote this economic growth while maintaining the wonderful life style that is Colorado arises; all sides from media to legislators to the public ask: Where's COGA on that? The reason COGA is trusted is because the staff and leadership of COGA work hard to engage all levels of the Colorado oil and gas industry from large to small operators, from producers to midstream gatherers, and from service providers. This is the uniqueness that has become COGA – build a broad representation of your trade base and connect it with a trusted relationship with regulators and the public.

Moving forward COGA is also an adaptable organization representing an industry that has changed immensely in Colorado. In today's world the public wants choice in its energy supply and seeks understanding of how those choices impact everyday life. As you would expect – COGA is there too. COGA is engaging with regulators and the public as to how Colorado's energy mix fits into the state's long term economic health while preserving the state's environmental heritage. I would ask all of you to reflect on Cleaner, Better, Further, Safer during this conference. These words are the future of oil and gas in Colorado. As your companies develop in these areas please continue to do so within the context of COGA allowing all our individual voices and efforts to be heard on a much larger stage.

John Mummery
BP America
COGA Executive Board Chairman

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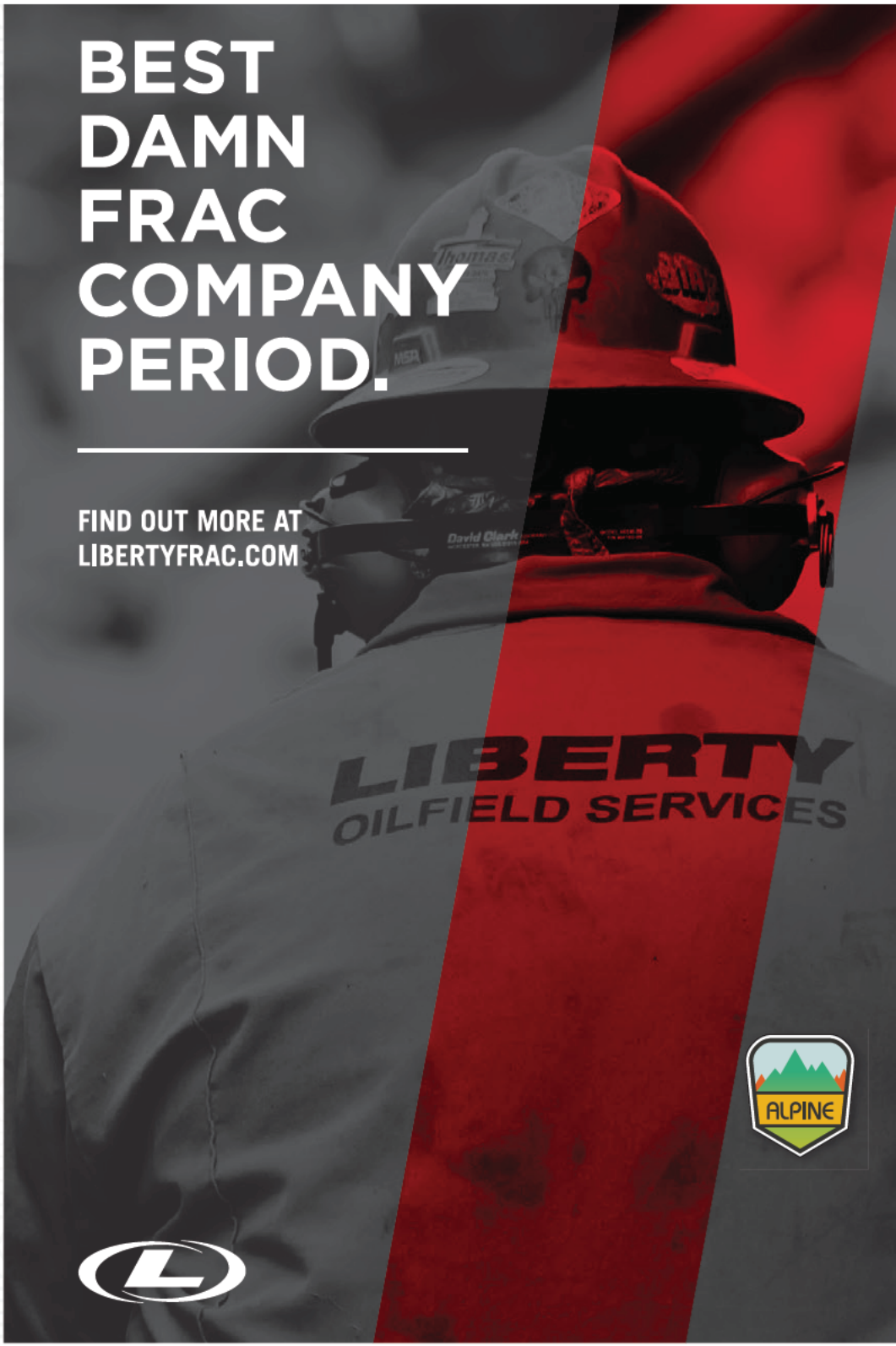
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the EXPLORATORY

Join us at The Exploratory during expo networking breaks for these outstanding breakout sessions. Check with printed schedules at The Exploratory for any scheduling updates.

TUESDAY 11:00-11:30 AM

COLORADO STATE LEGISLATOR Q&A FORUM

Join Colorado's Lawmakers in a unique forum designed to facilitate conversations about the state and region's energy future. Bring your questions and get the inside perspective from the men and women shaping Colorado's oil and gas policy.

TUESDAY 1:20-1:40 PM

USING DATA TO DRIVE BUSINESS FORWARD

EnergyIQ

Information overload? EnergyiQ is helping E&P companies leverage data to optimize business value, stay ahead of competition, and protect capital. Learn how more data can help your company realize more value.

TUESDAY 3:05-3:25 PM

THE WEST SLOPE TO THE WEST COAST

David Ludlam – West Slope COGA

They say policy and trends begin in California. So if Rockies dry gas producers want an opportunity to aspire to, "Cleaner, Better, Further, Safer" Then we better get busy having direct conversations with the people of California, Washington and Nevada about how we'll get there. Hear from West Slope COGA Executive Director, David Ludlam about how they're getting serious about transforming the West Coast's understating of natural gas.

WEDNESDAY 10:45-11:15 AM

GOT DRONES?

Ascent Geomatics

They say policy and trends begin in California. So if Rockies dry gas producers want an opportunity to aspire to, "Cleaner, Better, Further, Safer" Then we better get busy having direct conversations with the people of California, Washington and Nevada about how we'll get there. Hear from West Slope COGA Executive Director, David Ludlam about how they're getting serious about transforming the West Coast's understating of natural gas.

WEDNESDAY 1:05-1:25 PM

COALITION BUILDING: HOW PIPELINERS LAY THE GROUNDWORK

Your voice matters. The approval of new energy infrastructure is critical to meet the increased domestic energy demands. Learn how the Pipeliners Union has created the American Pipeline Action Network to advocate for specific projects regionally and across the nation.

WEDNESDAY, 2:50-3:10PM

COLORADO OIL AND GAS CONSERVATION COMMISSION (COGCC) UPDATE

Join us for an update on recent developments at the COGCC from Director Matt Lepore.

THURSDAY 10:40-11:15 AM

MARKET ANALYTICS UPDATE

Bernadette Johnson – VP Market Intelligence at Drillinginfo

Bernadette Johnson joined Drilling Info through the acquisition of products and services from Ponderosa Energy. She serves as Vice President, Market Intelligence for Drilling Info and is responsible for helping to grow and expand DI's analytics offerings, building on the work she did at Ponderosa Energy leading consulting engagements and research efforts. With over 10 years' experience in the energy industry, Bernadette has earned the reputation of industry expert with extensive experience providing crude, natural gas, and NGL fundamentals analysis and advisory services to various players in the North American and Global energy markets.

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THANK YOU TO OUR 2017 MEMBERS

Your 2017 membership ensures that the oil and gas industry continues to speak with one effective and robust voice. Further, your dues enable us to continue our critical work during what will surely be a challenging year ahead. We are a stronger, more effective industry when we stand united.

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The 31st Annual COGA Golf Tournament was held on Monday, August 21st at the award-winning Bear Dance Golf Club in beautiful Larkspur, Colorado. The tournament is open to COGA Member companies only. To inquire about the 2018 golf tournament, email golf@coga.org.

**Includes only golf tournament sponsors confirmed and paid by July 14, 2017*

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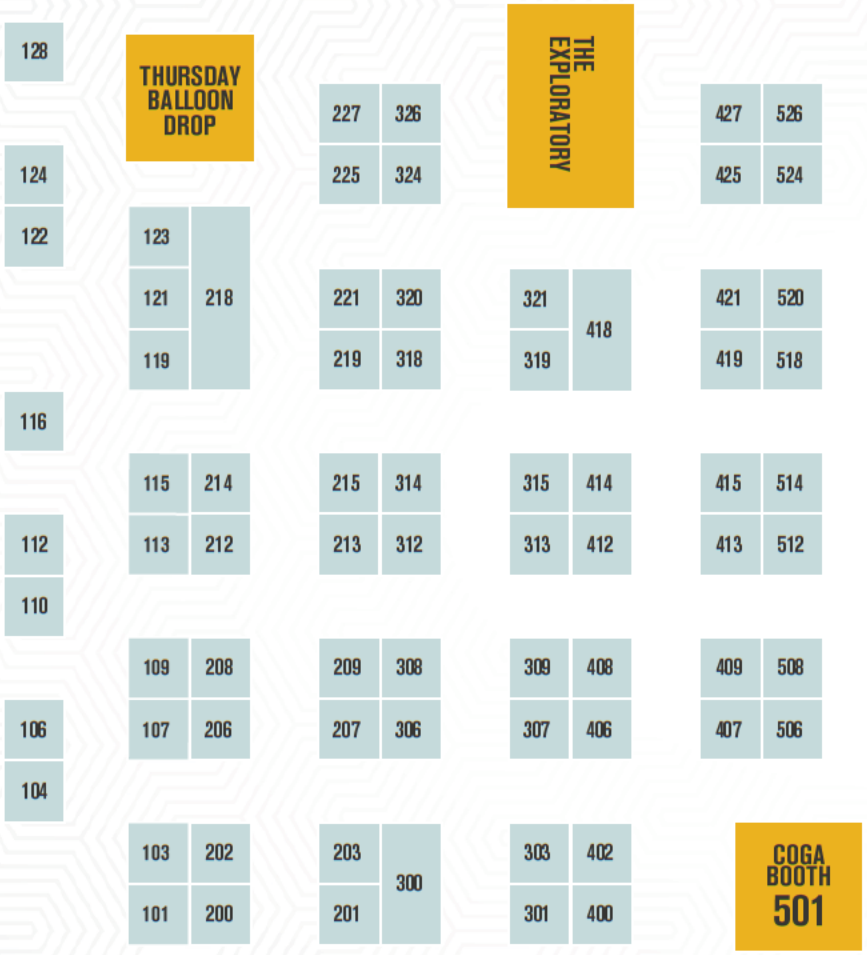
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For Dry Gas Producers in the West, **Getting Cleaner, Better (and Going Further, Safer)** *First* Requires Conversation with the Golden State



BY DAVID LUDLAM
EXECUTIVE DIRECTOR, WEST SLOPE OIL & GAS ASSOCIATION

Competitors spend big money confining the value prospect of NatGas to the narrow debate about electric generation—as if contributions to society from natural gas only matter in relation to wind and solar. This false narrative is a grave risk for dry gas producers in the West eroding demand and disparaging the NatGas brand without consumers understanding what natural gas actually means to modern life. Californians are the primary consumers of Rockies' natural gas. Speaking to them directly about the societal value of Colorado energy products beyond electric generation is an investment we can't afford not to make.

California's political leadership is heavily influenced by the monies of natural gas' competitors. These business interests use Earth Justice, Sierra Club and other similar vehicles to erode NatGas market share. Just this June the two organizations managed stopping three previously approved, shovel ready Natural Gas electric generation plants in the Golden State. These and other similar victories are won on a false but well funded policy choice presented to West Coast communities: IF the U.S. doesn't use natural gas for electricity, THEN there will be no need to drill and we can leave even the cleanest fossil fuel in the ground. Spoon fed to Colorado's most important energy customers, there is anecdotal evidence suggesting the most important consumers for dry gas producers in the Rockies are hearing and believing this message.

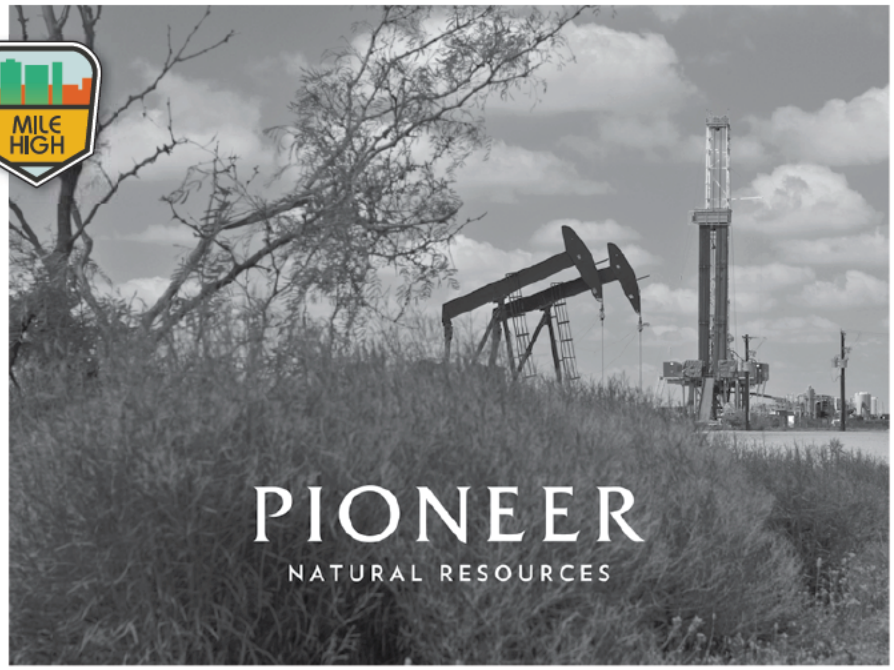
Would, however, west coast citizens feel differently about natural gas if they knew Rocky Mountain reserves will, over the long-term, be produced no matter what happens in the electric utility sector? Would west coast acceptance of natural gas grow if they knew one of California's most important economic sectors, agriculture, was intimately connected to having a healthy and sustainable domestic gas production base? And if they understood the value of Natural Gas in its totality, would Californians by extension be more open to generating electricity using natural gas moving forward?

California is arguably the most important state in the union when it comes to Americas food supply. The Golden State grows a significant percentage of Americas most valuable staple crops including those foundational to society. To this end Californians might find interest in understanding their partnership with gas producers in the business of feeding the nation. The world's food supply comes from the miracle of modern fertilizers. The world's fertilizers come from ammonia. All ammonia is made from natural gas. The Rockies hosts an abundance of dry natural gas ideal for fertilizer making. Because dry gas basins in the Rockies hold hundreds of trillions of cubic feet of reserves, and Californians consume a whopping 800,442 nutrient tons of fertilizer annually, the two states essentially function in an interdependent energy-for-food partnership. So the status quo debate is a cartoonish conversation that glibly compares the merits of wind-and-solar versus natural gas as though the two are interchangeable. But in terms of value to society wind mills are not very good at creating fertilizer, plastics, vaccines, complex machines, medicines and nearly every consumer good touched by the natural gas supply chain.

The chemistry of natural gas is what makes the fuel so dynamic. Once processed methane gas is separated and sent to homes, water heaters and electric generation facilities. The other parts -butane, propane, ethane for example- are separated to make more complex consumer goods. Natural gas has many usable parts --the equivalency of using every piece of the buffalo. The dynamic character of the fuel is reflective of a fact: natural gas is the most diverse, transportable and important source of energy on the planet today. No other source of energy can be applied to as many diverse end-uses including California s critical food raising and agricultural businesses.

They say policy and trends begin in California. So if Rockies dry gas producers want an opportunity to aspire to, Cleaner, Better, Further, Safer Then we better get busy having direct conversations with the people of California, Washington and Nevada about how we'll get there. And we better get serious about transforming the West Coast's understanding of natural gas from a narrow option for electricity making into seeing NatGas as a dynamic and critical force for good in the world.

David Ludlam *is the Executive Director of the West Slope Colorado Oil & Gas Association. As an affiliate Chapter of the Colorado Oil & Gas Asscoiation, WSCOGA represents natural gas producers and suppliers in the heart of the Piceance and Sandwash Basins. The Piceance Basin is a current and future major source provider of natural gas to Western U.S. natural gas markets including California. Home to the Mancos Shale, Western Colorado likely hosts the nation's largest shale gas reserve as reported by the U.S. Geological Survey.*





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An Overview of the Energy Issues in the 2017 Legislative Session



BY JIM COLE
COLORADO LEGISLATIVE SERVICES

As we look back at the 2017 legislative session, it is important to consider both the societal and legislative pressures that guided this year s bill-making season.

The Dakota Access Pipeline Issue, the tragic events in Firestone and Mead, all put focus on the safety and regulation of the oil and gas industry in Colorado. Legislators on both sides of the aisle are looking for answers on how best to manage and foster the development of these resources. Below is a recap of some of the oil and gas related bills considered at the Capitol in 2017:

Safety issues were a big topic early in the session and centered around setback distances. Despite a 2013 rule-making that significantly increased setbacks from occupied buildings and a study released in February by the CDPHE showing the current setback distances were sufficient; House Democrats introduced legislation to further increase the distance by which oil and gas production can occur from a school. HB17-1256 died in the Senate on a bipartisan vote but the issue was raised again following the tragic explosion in Firestone. The investigation into the incident concluded that the distance between the home and the oil and gas well was not a factor in the explosion, but proponents of larger setbacks continue to use this incident as a call for expanding setbacks.

The longstanding Colorado law governing the statutory pooling of oil and gas resources was next raised as a potential issue. This discussion is being stimulated by the fact that housing development and oil and gas development have moved closer together along the Front Range. This also has become an opportunity for local and national anti-oil and gas activists to become increasingly more engaged on this issue. So much so that some Boulder County legislators worked together to introduce HB17-1336 which would have changed the standards by which statutory pooling could occur. The bill arbitrarily lengthened the notice process to 90 days, required 51 percent control of the minerals, and made proprietary lists of mineral owners and their lease status public. After House passage, the bill died in the Senate Agriculture and Energy Committee, in part because Republicans saw this effort as a way to stop oil and gas development.

Democrats were not alone when issuing "statement bills, Republicans had some of their own that affected industry. Two were Postponed Indefinitely in the House State, Veterans and Military Affairs Committee controlled by the opposing party. The first bill, HB17-1124, would have required local governments to compensate mineral owners for the value of their minerals if local regulations were approved that prevented the development of the resource.

The second bill, SB17-035, would have increased criminal penalties on those people who tamper with oil and gas gathering systems. Important as it stood, with protests growing more violent at North Dakota s DAPL, this bill took on a life of its own – critics saying that it was a symbol against Freedom of Speech. After passing in the Senate, this bill was Postponed Indefinitely in the House.

Eventually there was room found to work together, but cooperation was short lived. A bill, HB17 -1116, that extended the Low Income Energy Assistance Program (LIEAP) was passed, as was HB17 -1285, which increased fees on industrial water users culminating a two-year process to also preserve a general fund commitment to funding the state's water quality program.

Bipartisanship however was short-lived and before the end of session there was a breakdown in cooperation. Late in the cycle came two bills that were contentious. The first was a bill inspired by the Firestone explosion, HB17-1372. It would have required the state to retain a map of all flow lines and all oil and gas infrastructure. The second was SB17-301, "Concerning Energy Related Statues . This bill, introduced in the waning days of the session, was a target for amendments. Because of its broad title, it had challenges from the beginning. Utilities, oil and gas, and environmentalists could not come to an agreement on future energy portfolios and the bill died on the last day of session, which resulted in the defunding of the Colorado Energy Office (CEO). The Governor threatened special session to remedy this, but eventually decided against it.

Although the legislative session has adjourned, discussions continue on a variety of oil & gas related issues. Representative Lori Saine (R-Firestone) and Senator Vicki Marble (R-Loveland) are holding informational sessions to discuss safety and pooling issues. House Democrat leadership have also indicated an interest in having a dialog regarding statutory pooling.

Societal and political pressures will continue to mount. Elected officials will be looking to provide information to their constituents, while also watching the atmosphere of the 2018 election, when Colorado voters will decide the next governor. It s more important than ever for the oil and gas industry to remain engaged with stakeholders, elected officials, and citizens to ensure we are providing transparent and factual information about the good work and benefits our industry provides to the state.

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An Analysis of the Colorado Court of Appeals Decision Re-Interpreting the COGCC's Duties and Authority

On March 23, 2017, the Colorado Court of Appeals issued a decision turning the Colorado Oil and Gas Conservation Commission's ("COGCC") historical understanding of its scope of authority the Colorado Oil and Gas Conservation Act ("Act") on its head.

For over twenty years, the COGCC has interpreted the Act to require a balancing of oil and gas development with a number of other public interests, including protection of the environment.

This interpretation is well-founded, relying on, among other Act provisions, the Act's legislative declaration, which states that it is in the public interest to:

> **FOSTER** THE RESPONSIBLE, **BALANCED** DEVELOPMENT, PRODUCTION, AND UTILIZATION OF THE NATURAL RESOURCES OF OIL AND GAS IN THE STATE OF COLORADO **IN A MANNER CONSISTENT WITH** PROTECTION OF PUBLIC HEALTH, SAFETY, AND WELFARE, INCLUDING PROTECTION OF THE ENVIRONMENT AND WILDLIFE RESOURCES.

Accordingly, the COGCC respectfully denied a petition filed by a group of youth activists opposed to oil and gas production requesting that the COGCC engage in a rulemaking to adopt an extreme rule that would halt all new oil and gas production in Colorado until it could be proven that oil and gas production can occur with no direct or cumulative environmental impact. The COGCC reasoned that the proposed rule "would have required the Commission to readjust the balance crafted by the General Assembly under the Act, and is therefore beyond the COGCC s limited grant of statutory authority. A Colorado district court agreed with the COGCC, but a panel of the Colorado Court of Appeals found otherwise.

In a published 2-1 decision, the appellate court rejected the COGCC s longstanding policy of balancing all public interests embedded in the Act and effectively re-wrote the meaning of the phrase "consistent with as found in the Act. The court held that "consistent with means "subject to or "a condition that must be fulfilled, and consequently determined that "the Act does not create a balancing test weighing safety and public health interests against development of oil and gas resources, but rather, the Act indicates that fostering balanced, nonwasteful development is in the public interest when that development is completed subject to the protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

Although the court did not hold that the COGCC necessarily must grant the activists petition and enact the proposed rule on remand, the court made it clear that the COGCC has the authority to do so and cannot refuse to grant the petition or a similar request based on the premise that the Act involves a balancing of public interests.

By throwing out the balancing test yet not providing any guidance on what level of environmental compliance is required for a proposed operation or rulemaking to be considered "consistent with the protection of public health, safety, and welfare, the decision could be interpreted as mandating that the COGCC may not approve any operation or rulemaking that impairs the environment to any degree. The decision also could be used to undermine the validity of the COGCC s existing set of exhaustive rules and regulations governing all aspects of oil and gas development, as the COGCC promulgated its regulatory framework pursuant to its rejected interpretation.

There is ample reason to believe that the court of appeals ruled incorrectly. As pointed out by the decision s dissenting opinion, the court narrowly focused on the phrase "consistent with from the Act s legislative declaration while ignoring other provisions in the Act that support—if not demand—that the Act be read as requiring a balancing. This includes a legislative mandate that the COGCC regulate oil and gas operations in such a manner to prevent and mitigate "significant environmental impacts "taking into consideration cost-effectiveness and technical feasibility. There would be no reason to consider "cost-effectiveness and technical feasibility if, as the court of appeals held, it is true that the protection of public health and the environment is the determinative consideration for COGCC action.

The COGCC and the intervenors to the case, American Petroleum Institute and Colorado Petroleum Council, along with hearty amicus curiae support from nearly a dozen other entities including COGA, have petitioned the Colorado Supreme Court to review the decision. Stay tuned.





BY MARK MATHEWS & JULIA RHINE

CONFERENCE SPEAKER *biographies*



BILL AIMONE

Co-CEO & Founder, Trenegy Incorporated

Bill is co-CEO and founder of Trenegy Incorporated, a non-traditional Management Consulting firm in Denver and Houston. Prior to starting Trenegy 7 years ago, Bill was a Partner with Deloitte where he served clients in the oil and gas, manufacturing and services industries. During his time at Deloitte, Bill was instrumental in building the national oil and gas consulting practice, was a national leader for the Energy Practice's knowledge and innovation efforts and was engaged to speak on a variety of topics. Prior to Deloitte, Bill was a consultant for Ernst & Young, PWC and served in a variety of industry roles in oil and gas. Bill is best known for his ability to help companies implement innovative processes and systems to support growth. Bill is the author of Jar(gone), a book demystifying commonly misunderstood business concepts. Bill believes in giving back to the community and serves on the Executive Committee and Board of Directors for Boys & Girls Country and on the Board of Directors for Colorado Uplift. Bill holds an MBA from Baylor University in Waco, Texas and a BS in Economics from Texas A&M University in College Station, Texas.



ERIK ANGLUND, P.E.

Water Management Supervisor, Anadarko Petroleum Corporation

Erik Anglund is a native Colorado farm kid and Water Resource Engineer for Anadarko Petroleum Corporation. He works on all things water related for the company's operations in Colorado, including activities for construction, drilling, hydraulic fracturing, production, disposal and recycle. He has spent his career working with agricultural, municipal and industrial water rights, regulations, permitting and projects in Colorado and Wyoming. Erik also serves on the South Platte Basin Roundtable and on the board of the Colorado Water Congress. He has degrees in Mechanical Engineering, Agricultural Engineering, and Organizational Leadership; and is a registered Professional Engineer in Colorado, Utah and Wyoming.

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THOMAS P.M. BARNETT

Partner, Barnett Consuling L.L.C.

Thomas P.M. Barnett has worked in US national security circles since the end of the Cold War, starting first with the Department of Navy's premier think tank, the Center for Naval Analyses. From there he moved to serve as a senior researcher and professor at the Naval War College in Newport RI, where he became a top assistant to Vice Admiral Arthur Cebrowksi - the father of "network-centric warfare." After 9/11, Barnett served in Cebrowski's Office of Force Transformation in the Office of the Secretary of Defense as the Assistant for Strategic Futures. He developed a famous PowerPoint brief on the subject of globalization and international security (see his 2005 TED Talk), which later morphed into a New York Times-bestselling book, The Pentagon's New Map: War and Peace in the Twenty-First Century (2004). Since leaving government service in 2005, Dr. Barnett has worked for a series of technology-driven start-ups. Among his current business associations today are: Managing Partner, Barnett Consulting LLC (Madison, Wisconsin); Senior Research Institute, Knowfar Institute for Strategic & Defence Studies (Beijing, China); Member, Security Advisory Board, iJet International Inc. (Annapolis, Maryland).

Barnett completed his "Pentagon's New Map" trilogy with the volumes, "Blueprint for Action: A Future Worth Creating" (2005), and "Great Powers: America and the World After Bush" (2009). Dr. Barnett holds a PhD in political science from Harvard University (1990). He is based in Madison, Wisconsin, and travels the world giving speeches and conducting strategy work with both private- and public-sector enterprises.



HONORABLE MICHAEL BENNET

United States Senator, Colorado

Michael Bennet has represented Colorado in the United States Senate since 2009. Widely recognized as a pragmatic and independent thinker, he is driven by an obligation to create more opportunity for the next generation. Michael has built a reputation of taking on Washington dysfunction and working with Republicans and Democrats to address our nation's greatest challenges – including education, climate change, immigration, health care, and national security. Before serving in the Senate, Michael worked in business and then in public service – as Chief of Staff to Denver Mayor John Hickenlooper and Superintendent of Denver Public Schools. He lives in Denver with his wife and three daughters.



ROGER BIEMANS

President & CEO, Vantage Energy Acquisition Corp.

Mr. Biemans is the CEO of Vantage Energy Acquisition Corp. ("VEAC"), a Special Purpose Acquisition Company and Director and Advisor for San Jacinto Minerals II LLC, a private mineral acquisitions company active in a number of high quality basins in the USA. Prior to forming VEAC, Mr. Biemans was Chairman and CEO of Vantage Energy LLC, a private company he founded in 2006, before selling to Rice Energy Inc. in a $2.7 billion transaction in October 2016. Prior to forming Vantage Energy, he was President of EnCana Oil & Gas (USA) Inc., where he led EnCana Corp's USA growth platform from 2000 through 2006, and from 1996 through 2000, served as Vice-President & Team Lead for AEC Oil & Gas (EnCana Corp) in Alberta, Canada. Mr. Biemans holds a BSc in Mechanical Engineering from the University of Calgary.



JEREMY BOAK

Director, Oklahoma Geologic Survey

Jeremy Boak started as Director of the Oklahoma Geological Survey in July 2015. He served as the Co-Chair of the Oil Shale Symposia, 2006-2015, a role he started as Director of the Center for Oil Shale Technology and Research (COSTAR) at the Colorado School of Mines.

He was an environmental and nuclear materials project manager at Los Alamos National Laboratory, and manager for performance assessment of Yucca Mountain at the U. S. Department of Energy (DOE) in Nevada. Dr. Boak was an exploration geologist at ARCO Oil and Gas, Inc., in Anchorage, Denver, and Bakersfield.

He received his doctorate in Geological Sciences from Harvard University, for work on the 3.8-billion-year-old Isua supracrustal suite, West Greenland. He received AB and MS degrees from Harvard and an MS from the University of Washington, all in Geological Sciences.

Dr. Boak is married to Anna Stafford, a petroleum geologist and oil finder, and has a stepson Chris who plans to return to school this year in engineering.

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In November of 2017, a printed version of the book will be provided to each attendee of the COGA Annual Meeting and an additional copy will be mailed to all member companies. Electronic versions will also be made available to members.

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HOWARD L. BOIGON

Founder, Boigon Law Ltd.

Howard L. Boigon is the founder and sole member of Boigon Law Ltd., a Denver law firm specializing in transactional, legislative, and regulatory matters in oil and gas law and policy, both domestically and internationally. He represents a broad spectrum of parties involved in oil and gas industry matters, including exploration and production companies, local governmental entities, and landowners. Before founding his own firm, Howard was a partner in the Denver office of Hogan Lovells, a global law firm. Prior to that, Howard served in executive positions at Basin Exploration, Inc. and Westport Resources Corporation, both Denver-based publicly traded oil and gas companies, and was a partner in the natural resources department of Davis, Graham & Stubbs, a Denver law firm.

Howard is a board member and past president of the Colorado Oil and Gas Association and serves on the steering committee for COGA's annual conference. He is also a member of the Advisory Board of the Institute for Energy Law and trustee of the Rocky Mountain Mineral Law Foundation. Previously, he has chaired the Mineral Law Section of the Colorado Bar Association and served as Natural Resources Practitioner in Residence at the University of Denver School of Law.

Howard has lectured and written widely on land use issues, regulatory policy, and various aspects of oil and gas law and practice. He was a principal author of the 1989 AAPL Form 610 Joint Operating Agreement.

Prior to entering private practice, Howard served as a law clerk to The Honorable Wade H. McCree, Jr. of the U.S. Court of Appeals for the Sixth Circuit. He is a graduate of the University of Michigan for both college and law school.



KEVIN BOOK

Managing Director, ClearView Energy Partners

Kevin Book heads the research team and covers oil, natural gas, refined products and coal policy.

Mr. Book appears frequently within print and broadcast media, contributes to policy forums convened by government and private organizations and meets with top Washington decision-makers. Mr. Book has also testified before several House and Senate Committees.

Mr. Book is a member of the Council on Foreign Relations. He is also a member of the National Petroleum Council, a self-funded advisory body to the Secretary of Energy, and a nonresident Senior Associate with the Energy and National Security Program at the Center for Strategic and International Studies.

Prior to co-founding ClearView, Mr. Book worked as a senior energy analyst for a national investment bank. He holds an M.A. in law and diplomacy from the Fletcher School of Law and Diplomacy and a B.A. in economics from Tufts University.



BOB BRADDOCK

Senior Project Advisor, Jordan Cove Energy Project, L.P.

Mr. Braddock is presently Senior Project Advisor and former Project Manager for the Jordan Cove LNG exportation terminal currently under development in Coos Bay, Oregon. Since holding his first job in the energy industry as night laboratory technician for TOSCO in support of the Colony Oil Shale Project in Parachute Creek in 1966 he has held positions of process engineer, engineering economist, manager of enhanced oil recovery operations and manager of research for the Tosco Corporation.

Since 1983 Mr. Braddock has developed natural gas based projects in industries and location that include: methanol and hydrogen production (Szechuan Province, Peoples Republic of China; Colorado), iron carbide manufacture (Republic of Kazakhstan), natural gas gathering and processing; (Kansas, Wyoming & Colorado), and helium recovery (Colorado).

Mr. Braddock holds degrees in Metallurgical Engineering from Colorado School of Mines, and M.B.A/Operations Research from the University of Colorado.



TAMARA BRAY

Group Vice President & Chief Human Resources Officer, DCP Midstream

Tamara joined DCP in 2014. Prior to that, she was the vice president of global people and organization development for Molson Coors Brewing Company. In that capacity, she led all global talent management, organization development, and compensation and benefits activities. Tamara joined Molson Coors from Dana Holding Corporation where she most recently was vice president of human resources for Europe and South Africa, having responsibility for all human resource activities in the region. Prior to this role, Tamara held several other key positions during her career with Dana including vice president of corporate human resources and senior director of off-highway and commercial vehicle technologies group. In addition to her roles at Dana, Tamara has served in key HR roles at Bechtel Corporation and Ford Motor Company. Through the course of Tamara's career, she's been responsible for all aspects of human resources, including performance management, compensation and benefits, health and safety, labor and employee relations, employee and organizational development, culture change, strategic planning and M&A.

Tamara earned a bachelor of science degree from Purdue University and a master's degree in organizational communication from Purdue University, with an emphasis in human resources management. Tamara is chair of the board of the Denver Dumb Friends League.

Tamara and her husband, Patrick, live in Sedalia, Colo.

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E. RUSSELL (RUSTY) BRAZIEL

President & CEO, RBN Energy

E. Russell ("Rusty") Braziel is one of the most respected authorities in the field of energy markets and information. He is president and CEO of RBN Energy, a leading energy market analysis and advisory firm and is the author of The Domino Effect, bestseller book about understanding energy markets.

He spent 20 years with Texaco (Chevron), serving as Vice President of Natural Gas Marketing and Trading and Manager of NGL Supply. Subsequently he was Vice President of Business Development for The Williams Companies.

In the 1990s Mr. Braziel founded and served as President and CEO of Altra Energy Technologies, a developer of energy trading software (now part of Intercontinental Exchange, or ICE). He also was Vice President, Natural Gas Liquids Marketing and Operations for EOTT/Link Energy, LLC. Later he was co-owner and senior executive at Bentek Energy, an energy consultancy purchased by Platts/ McGraw Hill in 2011. He is currently a member of the Board of Directors of Align Midstream Partners and the board of the North American Energy Standards Board.

Mr. Braziel holds BBA and MBA degrees in Business and Finance from Stephen F. Austin University. In 2014 he was named Stephen F. Austin Distinguished Alumni.

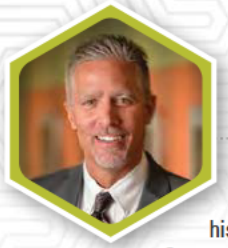


CHRIS C. BRIGGS

General Manager of Northern Gas & NGL Marketing

Chris is a General Manager for Anadarko Petroleum Corporation and currently responsible for managing the natural gas and NGL marketing activity in the Rocky Mountain Region. He has had the opportunity to manage all of Anadarko's core North American gas producing assets over the last eighteen years with Anadarko. Prior to joining Anadarko's mid-continent marketing team in 1997, he spent three years developing mid-west and mid-continent markets for Coastal Gas Marketing. He began his natural gas career with Petrus, Inc., located in Dallas, Texas in 1988, where he was instrumental in developing a major marketing presence in California, Arizona and Nevada during the early years of open access.

Chris received his Bachelor of Business Degree in Management and Computer Information Systems from Baylor University in 1985. He is a graduate of the Leadership Program of the Rockies and has received his Competent Speaker Certification from Toastmasters International. He comes from East Texas as a fourth generation oil & gas industry family man, who now resides in Highlands Ranch, Colorado with his wife of 28 years and three children.



Barton R. Brookman, Jr.

President and Chief Executive Officer, PDC Energy

Mr. Brookman, the Company's President and Chief Executive Officer ("CEO"), was appointed to the Board on January 1, 2015, simultaneous with his appointment as the Company's CEO. Mr. Brookman originally joined the Company in July 2005 as Senior Vice President-Exploration and Production; he was appointed to the position of Executive Vice President and Chief Operating Officer in June 2013 and then served as President and Chief Operating Officer from June 2014 through December 2014. Prior to joining PDC, Mr. Brookman worked for Patina Oil and Gas and its predecessor Snyder Oil from 1988 until 2005 in a series of operational and technical positions of increasing responsibility, ending his service at Patina as Vice President of Operations. The Board has concluded that in addition to his status of CEO of the Company, Mr. Brookman is qualified to serve as a Director due, among other things, to his many years of oil and gas industry executive management experience, his active involvement in industry groups and his knowledge of current developments and best practices in the industry. Mr. Brookman holds a B.S. in Petroleum Engineering from the Colorado School of Mines and a M.S. in Finance from the University of Colorado.



Tony Buchanon

President and Chief Executive Officer, Crestone Peak Resources

Tony Buchanon is the president and chief executive officer of Crestone Peak Resources, joining the company in August of 2016. Buchanon has more than 34 years of experience in the oil and gas industry in reservoir, completions, production and unconventional oil and gas exploration.

Prior to taking the helm at Crestone, Buchanon most recently was executive vice president and chief operating officer at Bonanza Creek Energy, a leading operator in the DJ Basin. During his career Buchanon also contributed to the growth of oil and gas companies including Noble Energy, Rosetta Resources Inc., Trend Exploration Company, Burlington Resources Inc. (now ConocoPhillips), and Mobil Exploration and Production (now ExxonMobil Corporation). Buchanon holds a Bachelor of Science in Petroleum Engineering from Marietta College. He currently sits on the Colorado Oil and Gas Association (COGA) Advisory Board.

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For more information, please contact:

Scott R. Smith - CEO
Midstream Energy Holdings
(713) 403-6472 | ssmith@mehllc.com

Don Wash – VP of Marketing and BD
Midstream Energy Holdings
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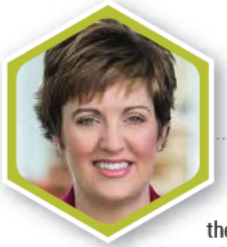
AUDREY CARLSON

MarComm Manager, Liberty Oilfield Services

Ms. Carlson is responsible for the overall branding of the company, advertising, customer relations and community outreach.

Ms. Carlson was hired at Liberty in August 2012, and held the positions of Business Admin and Marketing Coordinator prior to her promotion to Marcom Manager.

Born and raised in Colorado, Ms. Carlson is a current member of COGA's EnGen Class, as well as a member of Denver Petroleum Club's Emerging Leaders Council. Ms. Carlson is the day-to-day representative for Liberty's significant engagement with Coloradans for Responsible Energy Development (CRED). She teaches Lagree Pilates at Fierce45 in Denver, Colorado. Ms. Carlson attended the University of Colorado Boulder, where she received a B.S. in Business Administration with an emphasis in Finance.



DAWN CONSTANTIN

SVP Marketing & Regulatory Affairs, BP Energy Co.

Dawn Constantin is senior vice president of Marketing & Regulatory Affairs at BP Energy Co., based in Houston, Texas. In her role, Dawn leads the company's Marketing and Regulatory Affairs teams. She is sought after internally and externally for her insights, often speaking at customer and industry events. Dawn is also an active mentor within the organization, sharing her time and advice formally and informally with up-and-coming employees.

Dawn's Marketing team is responsible for the planning and execution of programs that position BP Energy Co. as a dynamic and trusted counterparty while also promoting customer excellence. Her Regulatory Affairs team advises on evolving policy developments that impact the marketing & trading businesses in Canada, the U.S. and Mexico. Dawn is a member of the Natural Gas Supply Association (NGSA) Business Leadership Committee.

Dawn's remit also includes acting as a liaison between BP's marketing and trading organization and its Upstream and Downstream affiliates on flow assurance and strategic initiatives.

Prior to joining BP, Dawn spent four years with TransCanada PipeLines in Calgary, Alberta. She holds her bachelor's degree in chemical engineering from the Technical University of Nova Scotia (now Dalhousie University). Dawn's 20 years of experience in the energy industry has primarily focused on analytics and influencing corporate planning and strategy.

Dawn is an avid sports enthusiast, along with her husband and 10-year-old daughter.



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TRISHA CURTIS

Co-Founder & President, PetroNerds, LLC

Trisha Curtis co-founded the company in 2015 and began working full time at PetroNerds in January 2016. She was formerly the Director of Research, Upstream and Midstream, at the Energy Policy Research Foundation, Inc. (EPRINC). Since 2010, she has led extensive research efforts and authored several reports on the North American upstream and midstream markets. At PetroNerds, Ms. Curtis is currently evaluating U.S. upstream assets on a wells-up basis, assessing the viability of midstream and downstream projects, and studying global markets in order to assess the impact of shale production and lower oil prices on the international oil market.

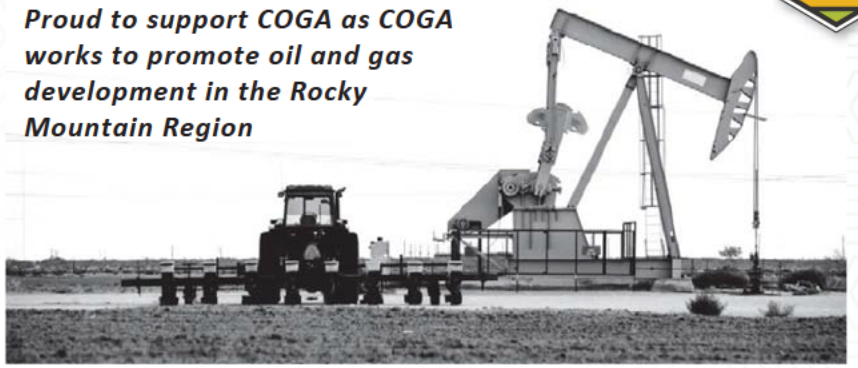
Ms. Curtis is a research associate at the Oxford Institute for Energy Studies (OIES) and a non-resident fellow at the Energy Policy Research Foundation, Inc.

Ms. Curtis completed her undergraduate work at Regis University in Denver, Colorado where she double majored in Economics and Politics, minored in Criminology, and graduated Summa Cum Laude. She has a Master of Science (MSc) degree from the London School of Economics in International Political Economy and wrote her MSc Dissertation on Chinese National Oil Companies. As an undergraduate, she also worked as a staff assistant in UK Parliament for John Grogan, Selby Constituency. Raised in northwest Colorado and southwest Wyoming, she grew up around pump jacks and has worked on oil and gas sites in Colorado and Wyoming with her father.

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SCOTT DESMARAIS

Partner, McKinsey & Company, Inc.

Scott Desmarais is an energy focused Partner with McKinsey based in Denver. He heads our Digital Oil & Gas practice in the Americas and is a leader working with McKinsey's global oil & gas clients. Born in Boulder, Scott recently moved back home to Denver with his family after spending the last few decades in Europe, Asia Pacific, Latin America, the Middle East and Africa.

Scott brings over 20 years of experience leading engagements with the world's top oil & gas corporations and governments on global energy opportunities and challenges. His work with international CEOs, managing directors and operations leaders on critical operations excellence improvements, digital transformations and new growth strategies has delivered significant, sustainable impact for leading oil & gas and electric power companies worldwide. Examples:

- Digital strategy design and corporate-wide digital transformation delivery for a leading North American midstream operator – along with other digital transformations supporting top E&P, refining and OFSE companies
- Gas strategy and execution for one of Africa's largest integrated gas & power corporations (e.g., gas production, LNG, LPG, CNG retail, gas pipelines, power generation, petrochem)
- Multiple energy policy, production improvement and operations excellence studies focused on increasing efficiency, reliability and risk management for upstream producers, midstream operators, refiners and retailers

Scott holds a MBA from the Wharton Graduate School of Finance and a MA in International Relations from the University of Pennsylvania. He also has a Certificat d'Études from the Chambre de Commerce de Paris. He is fluent in English and French; proficient in Spanish.



DR. JIM DUNCAN

Director, Market Research, ConocoPhillips Company

Dr. Jim Duncan is the Chief Data Strategist and Director of Commodity Market Research for ConocoPhillips. Ever-changing global market dynamics require a dynamic mix of mathematical modelling, fundamental and technical analysis, a fully developed network of global intelligence, and an experienced team at ConocoPhillips to monitor financial markets and highlight successful economic strategies ahead of market shifts to assist ConocoPhillips and its customers with optimizing their risk positions. Using a unique blend of quantitative, experience and observational skill, his team continually evaluates all facets of the market to optimize asset values and manage risk.

In addition to 20 years as a trading economist building teams that monitor and predict financial market shifts for Fortune 500 companies, Dr Duncan has another 20 years with a broad background in science, engineering, and the arts. He spent his first 20 years in business as an engineer in process design, construction, and troubleshooting, where he led teams that produced patented petrochemical processes. In 1995, he sold his international manufacturing company and returned to the academic world as a professor of undergraduate and graduate chemistry, mathematics, and nutritional biochemistry. In 1998, Wall Street came knocking during a period when classical scientists were being hired to design and build financial models, which started the predictive analytics period in the finance world; giving a new eye and applying new methodologies to business acumen and data mining.

Dr Duncan has spoken to audiences in several countries and across the U.S. on a wealth of topics including price risk strategies and energy market fundamentals in the crude oil, refining products, petrochemical, natural gas, and power markets. He is a featured and popular speaker at numerous conferences and symposiums year-round.

Dr. Duncan is a member of the International Association of Energy Economists and a member of the Advisory Board at Tulane University's School of Business, a member of the Board at the University of Houston's School of Business, as well as member of the Advisory Board to the Schools of Business & Meteorology at the University of Pennsylvania. He is on the Advisory Board of the International Research Institute for Climate and Society (IRI), in Columbia University's Earth Institute. He holds a Bachelor of Science degree in Chemistry and a Ph.D. in Physical Inorganic Chemistry and Chemical Engineering.

Dr Duncan enjoys golf, reading, and flying "any kind" of airplane he can find. Classically trained in opera, he's also had a successful career in recording and performing.

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HONORABLE CORY GARDNER

United States Senator, State of Colorado

Senator Cory Gardner is a fifth-generation Coloradan who was born and raised in Yuma, a small town on the Eastern Plains of Colorado where his family has owned a farm implement dealership for over a century. He lives in the same house his great-grandparents lived in. Cory graduated summa cum laude from Colorado State University and received his law degree from the University of Colorado Boulder. After working at his family implement business and the National Corn Growers Association, Cory took a position as a Legislative Assistant for Senator Wayne Allard (R-CO) and quickly advanced to his Legislative Director.

He began serving in the Colorado House of Representatives in 2005 where he spent time as the Minority Whip and became known for his expertise in natural resource and agriculture policy. Cory was elected to the U.S. House of Representatives in 2010. As a member of the House Energy and Commerce Committee, Cory championed a true all-of-the-above energy strategy that promoted traditional resources as well as renewable energy. In addition, Cory is a national leader on energy efficiency initiatives and founded a bipartisan energy efficiency caucus in the House.

In the Senate, Cory continues to pursue common sense energy policy as a member of the Senate Energy & Natural Resource Committee and Chairman of the Energy Subcommittee. In addition, Cory serves on the Foreign Relations Committee, the Commerce, Science, and Transportation Committee, and the Budget Committee. He also serves as Chairman of the Subcommittee on East Asia, the Pacific, and International Cybersecurity Policy.

As Chairman of the Foreign Relations Subcommittee on East Asia, the Pacific, and International Cybersecurity Policy, Cory led the effort to impose broad new sanctions against North Korea, as the regime continues to be a leading abuser of human rights and its reckless advancement of nuclear weapons threatens our national security.

Cory is focused on expanding the economy, creating jobs, and making life better for all Coloradans. He lives in Yuma with his wife Jaime and their three children: Alyson, Thatcher, and Caitlyn.

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Michael B. Hancock

Mayor of Denver

Michael B. Hancock is Denver's 45th mayor. During his time in office, Mayor Hancock and his administration have eliminated the city's budget deficit, fostered a diverse economy and restored much needed services that were lost during the recession. With a drive toward increasing opportunity for every resident, he has prioritized innovative solutions to investing in the city's children and youth; increasing mobility options, affordable housing and services for the homeless; supporting economic mobility, entrepreneurs and small businesses; and making government work smarter for residents. Prior to becoming mayor, he served on the Denver City Council for eight years and was President of the Metro Denver Urban Leagues.



John Harpole

Founder & President, Mercator Energy LLC

John Harpole is founder and president of Mercator Energy LLC, a natural gas services, brokerage and energy market analysis company. Mercator assists both producers and end users throughout the United States in selling and sourcing natural gas supplies. Mercator is considered to be one of the largest natural gas brokers in the U.S., currently trading in excess of 1 BCF per day of natural gas. Mercator also conducts specific research projects for client groups exploring the impact of industry trends on various regional markets. Mercator's analysis on "Poverty and Fracking" was featured in a Wall Street Journal editorial and on Fox News.

Harpole has provided strategic advice and counseling to independent oil and gas producers, power producers, major electric and gas utilities, hedge funds and energy traders, retail and wholesale energy marketers, equipment vendors and large energy users typically at the CEO level. He has also played a key role in developing innovative new business structures and in helping to transform energy and environmental policy at the state and federal levels.

Harpole is an Advisory Board Member of the Western Energy Alliance (formerly IPAMS), the Leadership Program of the Rockies, University of Colorado's Global Energy Management Program (GEM) and Energy Outreach Colorado. He is also the moderator for the annual Wyoming Oil and Gas Fair and was recently invited to serve as a judge in the Daniels Fund Ethics Consortium Case Competition. Harpole has also been named to the Denver Business Journal's Who's Who in Energy for years 2014-2017.

At the request of the Grand Junction Energy Partnership and 3 Western Slope counties, Harpole recently authored a white paper entitled, "From the Piceance Basin to the Pacific Rim" that focuses on potential partnerships between West Slope Colorado producers and Asian LNG consumers.

Harpole has travelled to China twice in the last few years to instruct employees of PetroChina on the regulatory and marketing history of natural gas in the United States.



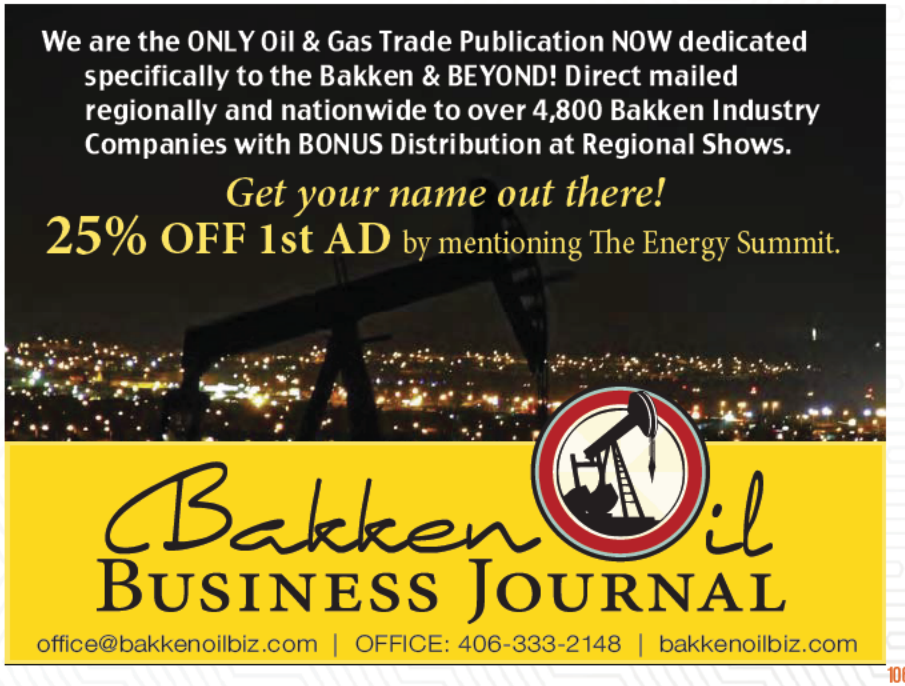
Dan Haley

President & CEO, Colorado Oil and Gas Association

Dan Haley serves as President & Chief Executive Officer of the Colorado Oil & Gas Association. Mr. Haley is responsible for leading the industry in Colorado legislative, regulatory, and public relations matters.

Previously, he was Vice President of Communications, Development and Strategy at EIS Solutions, a public affairs firm where he served as a consultant for numerous corporate and political clients, including oil and gas interests. Prior to that, Mr. Haley spent more than 20 years in the communications field, including 13 years at The Denver Post, where was the Editorial Page Editor. He also was Director of Corporate Communications for CoBank, a $100 billion bank headquartered in Denver.

A Colorado native, Mr. Haley has a bachelor's degree in Journalism from the University of Wyoming and sits on the Advisory Council to the USO Denver as well as the Colorado Advisory Committee for the U.S. Global Leadership Coalition.





Christina Henderson

President & Director, Suncor Energy USA Pipeline Company

Christina Henderson is President and Director of Suncor Energy USA Pipeline Company. She has worked for Suncor for more than 15 years, holding a number of positions in both Suncor's Upstream and Downstream divisions, spanning from process engineering and product trading, to plant operations and transportation. She has held leadership positions with the company for 11 of those years and is one of only two U.S.-based employees to transfer to Suncor's Oil Sands operations in northern Alberta, Canada. While there, she oversaw one of the extraction plants at the 5,000+ employee facility.

Christina was recently appointed to the Board of Directors for Girls in STEM, a non-profit organization that partners with schools to expose middle and high school-age girls to STEM careers, and to provide role models and mentors to young girls who may seek STEM professions in the future.

Christina holds a Bachelor of Science degree in chemical engineering from the Colorado School of Mines. She has two young daughters that keep her on her toes. In her spare time, she enjoys running, cooking, and trying to ski.





Britt Howard

Corporate VP-Health, Safety, Security, Environment & Quality, CH2M

Britt Howard is a humble Servant Leader. He routinely speaks at industry conferences, has been quoted in industrial magazines, and was an instructor at various colleges for 7 years. His experience in HSE management / leadership spans 33 states, eight countries and several continents mostly in the Petro Chemical Industry.

Britt imparts some of his personal and process safety philosophies in seral books he has written The Ten E's in Safety Leadership, a basic leadership book called Leadership in 50, and one he is writing currently "Professional Mentoring". He also has co-authored a series of children's book with his wife (Little B's Coaching in Safety, Behavior, and Leadership).

Britt's proudest accomplishment is the continued positive safety performance of the sites and groups with whom he has served. He is currently the Corporate Vice President - HSSEQ for the CH2M-HILL. Britt earned a BS in Criminal Justice from West Virginia State University, a MS in Safety Management from Marshall University; he is a Certified Safety Professional (CSP), and a Canadian Registered Safety Professional (CRSP).



Joseph N. Jaggers

CEO, President & Chairman of the Board, Jagged Peak Energy, L.L.C.

Joseph N. Jaggers was appointed as our Chief Executive Officer and President and as Chairman of our board of directors in September 2016, and has served as Chairman, Chief Executive Officer and President of Jagged Peak Energy LLC since April 2013. Prior to that, Mr. Jaggers served as the President and Chief Executive Officer of Ute Energy LLC from July 2010 until its acquisition in November 2012. From November 2012 until April 2013, Mr. Jaggers oversaw the winding down of Ute Energy LLC and evaluated potential opportunities in anticipation of the formation of Jagged Peak Energy LLC. Mr. Jaggers began his career in the oil and natural gas industry in 1981, when he joined Amoco Production Company ("Amoco") in Lake Charles, Louisiana. Mr. Jaggers worked for 19 years with Amoco and its successor, BP p.l.c., holding positions of increasing responsibility, including operations, engineering and executive assignments, in a number of domestic and international locations. In July 2000, Mr. Jaggers joined Barrett Resources Corporation as President and Chief Operating Officer and served in that capacity until Barrett Resources Corporation's merger with The Williams Companies, Inc. in 2001 where he served as Regional Vice President until 2006. Mr. Jaggers served as President, Chief Operating Officer and Director of Bill Barrett Corporation from 2006 until July 2010. In October 2009, Mr. Jaggers was elected into the Wildcatter Hall of Fame for his distinguished work and contributions to the oil and natural gas industry by the Independent Producers Association of the Mountain States. Mr. Jaggers graduated from the United States Military Academy at West Point in 1975 with a bachelor of sciences degree, after which he served his country for six years as a member of the United States Army. Mr. Jaggers is an independent director of National Fuel Gas Company (NYSE: NFG).



Charles D. Laudeman

Vice President-Marketing, Great Western Oil and Gas Company

Vice President-Marketing, Great Western Oil and Gas Company Charles joined Great Western in April of 2014 and is responsible for managing the Company's commercial marketing activities within the Rockies. Mr. Laudeman was most recently with Newfield Exploration Company managing the Uinta Basin crude by rail activities and supply for the SLC refinery markets. With over 20 years of business development experience in crude oil, natural gas, natural gas liquids as well as managing marketing logistics projects within the US and Central Europe. Mr. Laudeman began his energy career in Houston working for various independent producers and is currently living in Denver, CO. Mr. Laudeman attended the University of Southern California's International Relations School.



Joe Lima

Director of Environmental Sustainability, Schlumberger

Joe Lima is the Director of Environmental Sustainability for Schlumberger. Before this role, Joe served as Environmental Solutions Manager for Schlumberger Well Services where he was responsible for developing technologies that reduce the overall completion footprint as well as the development of the Schlumberger chemical disclosure process. From 2008 through 2010, Joe served as the Unconventional Resources Manager where he was responsible for directing technology development and application throughout the region specifically for shale and tight gas environments. He also served in various management roles for Schlumberger facilities in markets including the San Juan, Anadarko and Arkoma Basins. Joe spent four years as an in-house completions engineer for various customers.

Joe has served on the Boards of Colorado Oil and Gas Association, Interstate Petroleum Association of Mountain States and California Independent Petroleum Association. He holds a Bachelor's of Science Degree in Petroleum Engineering from Marietta College, Marietta, OH.

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Mehrzad Mahdavi

Vice President, Digital Solutions–Weatherford

Dr. Mahdavi is the Vice President, Digital Solutions, at Weatherford, where he is responsible for enhancing product and service offerings through information and analytical capability.

Dr. Mahdavi is a technology entrepreneur with focus on IoT, Cloud, predictive analytics, and their application to breakthrough IT and cybersecurity offerings. He previously served as the President and CEO of CyberSafe id, a global firm providing cybersecurity products and services. Prior to this position, he served as the president and CEO of Dexa Systems. Dr. Mahdavi has been the founder and CEO of several entrepreneurial companies for the last 10 years. Prior to his entrepreneurial career, he served in variety of technical and management positions in Schlumberger for 22 years. Dr. Mahdavi has served as Chair of the Society of Petroleum Engineers, Digital Energy Section, and is currently the SPE Digital Energy chair for strategy. He holds a PhD in Nuclear Science and Technology from the University of Michigan - Rackham Graduate School and a Bachelor of Science in Electrical and Electronics Engineering from the University of Illinois at Urbana-Champaign.



Binu Mathew

Global Head of Digital Products, GE Oil & Gas

Binu Mathew leads overall digital strategy, as well as the software development and operations organizations, for GE Oil and Gas. He is responsible for building next generation cloud software products that digitize the Oil and Gas industry. Binu joined GE from Oracle where he spent the past 16 years and most recently held the role of SVP of Product Development for PeopleSoft. He holds a B.Tech (Hons.) degree in Aerospace Engineering from the Indian Institute of Technology, Kharagpur.

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Marc McGill

EHSR Director, Noble Energy

Marc McGill has lived in the Houston area for 5 years with his wife and two daughters, following a move from Illinois. He quickly proceeded down the road of production in the E&P side of the industry. Marc exemplified the notion, working hard results in career advancement. He was successful at getting the job done, no matter what, until a significant life-altering event forced him to rethink this mentality. Circumventing processes, procedures and regulations only leads to negative outcomes…unless luck is on your side.

Today, Marc is the acting EHSR Director at Noble Energy. Although a degree in safety culture does not yet exist, he has made it his mission to make change happen. Marc has over 32 years' experience in this industry ranging from working in the field, as a midlevel supervisor to upper management, giving him unique perspectives. Not only does he have extensive operational and EHS experience, he has an uncanny ability to identify the strengths and gaps in the culture that have a direct impact on an organization's outcome.

In addition to his passion around culture change, Marc and his family enjoy driving around on the weekends in one of their Shelby Mustangs.



Peter Mueller

CEO and Co-Founder, EcoVapor Recovery Systems

Peter has been part of the oil and gas industry for 39 years, having graduated from the Colorado School of Mines with a degree in Petroleum Engineering.

He started his career with Mobil Oil as a drilling engineer working offshore and internationally specializing in relief wells. He later moved into production operations, marketing, midstream, and legal matters, including resolution of CBM ownership, groundwater, and royalty matters.

Peter chaired the Colorado Oil and Gas Conservation Commission from 2001 to 2007 when La Plata and Garfield Counties were booming gas plays and Weld County was relatively calm.

EcoVapor is an innovative service company with patented technologies to capture and condition flash gas coming off oil storage tanks so that it can be sold instead of flared.

Peter and his son Hans, who also graduated from CSM, co-founded EcoVapor in 2010, and have been putting out flares and cutting emissions for over seven years now.



Gale Norton

President, Norton Regulatory Strategies

As Secretary of the Interior, 2001-2006, Gale Norton played a key role in shaping national energy policies. In the face of crises including the September 11th attacks and the War on Terror, increasing domestic energy production became a major focus for Norton's term. She oversaw lands and offshore areas that produced a third of America's domestic oil, natural gas, and coal. She was actively involved in consideration of the Energy Policy Act of 2005, offshore and onshore oil and gas production, coal mine leasing and reclamation, hydroelectric generation, as well as biomass, wind and geothermal development. Norton was General Counsel for Royal Dutch Shell Unconventional Oil, 2007-2010, and Attorney General of Colorado, 1991-1999.

Gale is currently President of Norton Regulatory Strategies and serves on the Board of Directors of American Transmission Company, which operates electric transmission facilities across the US.

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Tom Petrie

Chariman, Petrie Partners

Prior to joining Petrie Partners as Chairman in 2012, Thomas A. Petrie was Vice Chairman of Bank of America Merrill Lynch. Previously, he was a co-founder of Petrie Parkman & Co., a Denver and Houston based energy investment banking firm that merged with Merrill Lynch in December 2006. Mr. Petrie was a former Managing Director and Senior Oil Analyst of The First Boston Corporation. During his career, Mr. Petrie has been an active advisor on more than $250 billion of energy related mergers and acquisitions, includinga number of the larger in the industry. Among its other assignments, Petrie Parkman advised the Kingdom of Saudi Arabia on its natural gas initiative, the State of Alaska on gas pipeline options, and the U.S. Department of Energy on the sale of the Elk Hills oilfield.

An active member of several industry associations, Mr. Petrie is a past President and member of the Board of Directors of theNational Association of Petroleum Investment Analysts. He has served on the Securities and Exchange Commission Advisory Board on Oil and Gas Accounting and has delivered a number of technical papers to the Society of Petroleum Engineers on the subjects of petroleum valuation, merger and acquisition trends, and energy policy. He has been interviewed on numerous occasions by Barron's and has appeared on "The News Hour," CNBC, Bloomberg, Fox News, and "Consuelo Mack WealthTrack" on PBS. He has also recently authored the book, FOLLOWING OIL: Four Decades of Cycle-Testing Experiences and What They Foretell about U.S. Energy Independence.

Mr. Petrie served for six years as a Trustee of the Association of Graduates of the United States Military Academy at West Pointas well as ten years on the Board of Directors of the Gettysburg Foundation. Currently, he is a Trustee of the Denver Art Museum and serveson the Board of Directors of the C.M. Russell Museum, as well as the Colorado School of Mines Foundation Board of Governors.

Mr. Petrie has a Bachelor of Science degree from the U.S. Military Academy at West Point and received his Masters of Science in Business Administration from Boston University. In December 2005, Mr. Petrie received an Honorary Doctorate of Engineering degree from the Colorado School of Mines. He is a Chartered Financial Analyst.

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Ward Polzin

CEO, Camino Natural Resources, LLC.

Ward is CEO of Camino Natural Resources, LLC, (Camino) a Denver based oil and gas company backed by Natural Gas Partners (NGP). He was recently CEO of Centennial Resource Development, LLC, (Centennial) a Delaware Basin focused oil and gas company which was purchased by Silver Run Acquisition Corporation and trades on NASDAQ under the ticker CDEV. Ward has over 30 years of experience in the upstream oil and gas industry in engineering, commercial, investing and transactional roles. Prior to forming Camino and Centennial, Ward served as a Managing Director in Investment Banking at Tudor, Pickering, Holt & Co., where he spearheaded the firm's E&P asset acquisition and divestiture (A&D) practice since inception. Polzin previously served as the US Country Manager at Enerplus Resources in Denver, Colorado, with a focus on Bakken development. He began his career in technical and commercial roles with BP in Alaska. He has a BS in Petroleum Engineering from the Colorado School of Mines and an MBA from Rice University. Polzin is also a CFA charterholder.



David Posner

President & Founder, Envent Energy

Over thirty-five years in energy marketing and analysis project evaluation and development, and management. Recognized expert on natural gas and natural gas liquid market dynamics. Extensive experience related to gathering, processing, transportation and marketing arrangements for oil and gas producing companies in production areas throughout the US. Expert witness in legal projects on royalty issues and contract disputes. Started EnVent Energy in 2000, a consulting company involved in transactional services, strategic consulting and project development. Worked with more than 50 client companies since inception. Formerly chief marketing executive for independent production companies with operations throughout the US, and in Canada, South America and Africa, and for GE subsidiary. Innovative problem-solver with strong analytical, negotiation and communication skills. Recognized as effective team member and leader who can earn internal and external support for objectives. Served as chair of two nonprofit boards.

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Brian Pugh

COO Production, BPL48

Brian Pugh Currently serves as Chief Operating Officer for BP L48 where he is responsible for production operations, purchasing and supply chain management, and data and analytics. Brian joined BP L48 in 2015 from SandRidge Energy where he served in a variety of operational positions including Vice President of Production Operations for their Midcontinent business unit. Brian began his career in oil in gas working for Shell where he served in various engineering and operational roles.

Prior to joining the industry Brian served our country as an Active Duty Combat Engineer Officer in the United States Army. His five years of military service included a tour in Iraq, where he was awarded a Bronze Star Medal.

He earned his Bachelor of Science Degree in Civil Engineering from Oklahoma State University in 2002.



Chip Rimer

Sr. Vice President, US Onshore, Noble Energy

Chip was born and raised in Chagrin Falls, Ohio (East of Cleveland). He graduated from Furman University in 1980 with a Business Degree and University of Texas in 1983 with a degree in petroleum engineering. He has a total of 34 years of oilfield experience.

Chip began his career in 1983 with ARCO Oil & Gas Company in Denver where he served as a drilling and completion engineer. In 1986 he moved to Midland, Texas working in the production and drilling departments for ARCO. In 1990 he was transferred to Lafayette, Louisiana as a Sr. Operations Engineer. His focus was GOM shelf and high pressure onshore areas.

In 1993, Chip was transferred to Houston Texas where he worked for Vastar Resource's in their Gulf of Mexico Region. His primary focus from 1995-2000 was offshore deep water operations.

In 2000, Chip worked for Aspect Resources as Drilling Manager. In 2002 when he was hired on by Noble Energy as Drilling Manager for their US Onshore Region. Over the next several years he was promoted to Noble Energy's VP of Operations Services where managed Noble's world-wide drilling and supply chain until end of 2011. In January of 2012, he managed Noble's International West Africa, Non-Operated and New Ventures Divisions. In April of 2013, Chip was promoted to Sr. VP Global EHSR & Operations Services. His present assignment is Sr. VP of Noble Energy's US Onshore which includes DJ Basin, Marcellus, Eagle Ford and Permian areas.

Chip has been married for 26 years and has 2 children, both attend Texas A&M in College Station, Texas.

Chip serves on the following Boards: University of Texas Petroleum Geosystems Engineering; Colorado Concern – Business Community; Colorado Oil and Gas Association (COGA); Protect Colorado Executive Committee; NBLX Midstream; Denver Chamber of Commerce.



Sarah Sandberg

Chief Operating Officer, Colorado Oil and Gas Association

Sarah Sandberg serves as the Chief Operating Officer for the Colorado Oil & Gas Association (COGA), and is responsible for COGA's financial direction, day-to-day operations, events, programs, local regulatory engagement, and community outreach. In this role, Ms. Sandberg has helped establish COGA as a leader in innovative programming and authentic engagement strategies. Additionally, Sandberg serves as Conference Director for The Energy Summit, a prominent energy conference in the West. She is a nationally recognized speaker on hydraulic fracturing and the dynamics of Colorado's oil and gas sector, with over a hundred speaking engagements across North America. She works with a relentless passion for the industry.

She also previously worked on communications and outreach within the Louisiana Governor's Office, including assisting with the Deepwater Horizon oil spill response efforts and several hurricanes. She received her bachelor's degree from the University of Colorado, Boulder and is current completing her coursework within the Executive MBA at Denver University's Daniels School of Business.

She serves on the Advisory Council for the Global Energy Management graduate program at the University of Colorado, Denver and is a board member for the Domestic Energy Producers Alliance. She is a Behind the Red Governing Council Member of the American Red Cross Mile High Chapter and an Associate Board Member of City Year Denver. She was named to the Denver Business Journal's 2016 "Who's Who in Energy" list and was a 2017 Top Women in Energy recipient.

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Shane C. Schulz

Director of Government Affairs, QEP Resources, Inc.

Shane C. Schulz is the Director of Government Affairs for QEP Resources, Inc. (NYSE: QEP). QEP Resources, Inc. is headquartered in Denver, CO and is an S&P 500 leading independent natural gas and oil exploration company. Shane oversees the day-to-day management of all federal, state and local legislative and regulatory efforts. This includes serving as QEP's trade association liaison for America's Natural Gas Alliance, Independent Petroleum Association of America, American Exploration and Production Council, U.S. Oil and Gas Association, Western Energy Alliance, US Chamber, along with a number of other federal, state and local trade associations. Additional responsibilities include: Treasurer of QEP Resources, Inc. Political Action Committee, numerous speaking engagements to stakeholder groups, and working with QEP's communications team on corporate and crisis management efforts.

Shane has served as the Director of Government Affairs since August 2006 (QEP Resources, Inc. was created in July 2010 from a spin-off of Questar Corporation). Prior to joining QEP, he worked for Congressman John Salazar as a Legislative Assistant being responsible for energy, public lands/natural resources, agriculture, and telecom policy issues in his Washington, DC office. Before working for Congressman Salazar, he practiced law in Wyoming.

Shane serves on the board of Western Energy Alliance, Louisiana Oil and Gas Association, Wyoming Taxpayers Association, Wyoming Business Alliance, University of Wyoming College of Agriculture Advisory Board, Wyoming Rural Development Council, and the Wyoming Stock Growers Land Trust Advisory Board. Shane is also the former Chairman of the ANGA State Affairs Committee, and the former Chairman of the Western Energy Alliance Legislative, Legal and Regulatory Committee.

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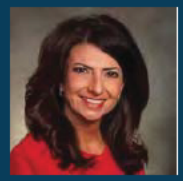
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Dave Stover

Chairman, President & CHIEF EXECUTIVE OFFICER, Noble Energy, Inc.

David (Dave) Stover brings more than 35 years of oil and gas industry experience to his current role as Chairman, President and Chief Executive Officer of Noble Energy - a member of the S&P 500 and one of the nation's leading independent energy companies. He was appointed Chairman of the Board in April 2015, CEO in October 2014 and elected to Noble Energy's board of directors in April 2014. Prior to his current role, he served as President and Chief Operating Officer, along with other executive positions since joining the company in 2002. Before joining Noble Energy, he was BP's Vice President and Business Unit Leader for the Gulf of Mexico Shelf from 2000 - 2002. From 1994 - 2000, Dave held various onshore and offshore management positions at Vastar Resources.

Earlier in his career, he held a number of engineering, operations and management positions at ARCO Oil and Gas Company. Active in industry and community organizations, Dave serves on the board and executive committee of Junior Achievement in Houston. He is Chairman of Spindletop International through 2017 and he is a member of the All American Wildcatters Association. He holds a bachelor's degree in petroleum and natural gas engineering from Pennsylvania State University and is a member of the Society of Petroleum Engineers.



Jade Strong, PhD

Managing Director & Founder, Mergentis

Jade Strong is an accomplished, hands-on senior executive with years of operational experience gained through strategically integrating business processes and people. She is a results-oriented, transformational leader with a strong focus on integrating teams and cultures that align with safety and the corporate vision, thus resulting in a proven track record of increasing revenue, cost management, and SAFE operations.

Prior to her experience in high risk industries, Jade engaged in research involving the organizational, social, and culture impacts following work-related injuries on an organization, which ultimately led to her foundational belief—focus on the people, at every level within the organization. Tired from operating in the 'reactive' or 'lagging' world, she now takes the lessons learned and applies them today to the 'proactive,' 'leading' side of the industry; that is, preventing incidents before they occur.

In her spare time, Jade travels the world and is proud to say she has been to every continent except Antarctica. Her most interesting travels took her to the infamous Siberia, where she had the opportunity to visit land rigs in -40° weather and the most dangerous underground coal mines in the world. When she's not traveling, she practices the art of patience while spending time with her two teenage daughters.



Alan Thomson

Senior Partner & Managing Director, Gloal Leader Energy Practice, Boston Consulting Group

Alan Thomson is a Senior Partner and Managing Director and is the global leader for the Energy Practice for The Boston Consulting Group. He is a global topic expert in oil and gas with significant domain experience in upstream, downstream oil refining, marketing, and petrochemicals. Alan has worked around the world with national oil companies, IOCs, and host governments on portfolio strategy, operational excellence, and organization effectiveness. He is a graduate of McMaster University with a B. Eng. Chemical Engineering.



Greg Vesey

Chief Executive Officer and Managing Director, LNG Ltd.

Greg joined LNGL as Managing Director and Chief Executive Officer effective 4 April 2016, based in Houston Texas.

Greg has held senior executive roles in the international energy sector through a distinguished career of 35 years with Chevron and Texaco.

Most recently he was President of Chevron Natural Gas & Vice President, Gas Supply and Trading from 2011 to 2015. In this role he was responsible for Chevron's Global LNG, natural gas, and natural gas liquid marketing and trading activity and was based in Houston. Previously as President of Chevron Global Power Company, he led a business unit which held a portfolio of commercial power plants and projects in the U.S., Asia, Middle East and Europe. Prior to that he led Chevron Technology Ventures for five years where he was responsible for creating a portfolio of new opportunities in technology commercialization, emerging energy and Chevron's venture capital investing.

Greg holds a Bachelor of Business degree from Northwestern State University of Louisiana.

In 2015 he completed a four-year term on the board of the Natural Gas Supply Association of America which is based Washington DC, the last two years of which he served as Chairman. He currently serves on two non-profit boards: Junior Achievement of Southeast Texas and the Alley Theatre in Houston.

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DR. BRYAN WILLSON

Executive Director of the Energy Institute at Colorado State University

Dr. Bryan Willson is Executive Director of the Energy Institute at Colorado State University (www.Energy.ColoState.edu), where he also serves as a Professor of Mechanical Engineering. He served as a Program Director at ARPA-E (Advanced Research Projects Agency – Energy, (www.ARPA-E.energy.gov) from 2012-2016 and continues to serve as a consultant / advisor to the agency. Dr. Willson has worked for over 25 years to develop and deploy large-scale technology solutions related to energy, air quality, and human health. As an entrepreneur, Dr. Willson is co-founder of Envirofit International (www.Envirofit.org), Solix BioSystems (www.SolixBioSystems.com), and Factor(e) Ventures (www.FactorE.com). In his university role, he has helped to launch or enhance numerous other companies. His research laboratory, the Engines & Energy Conversion Laboratory, has made important contributions in many areas, including: internal combustion engines, oil & gas production technology, advanced electrical grids, advanced biofuels, technology for the developing world, and advanced building technologies.

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CRESCENT POINT	81	QEP RESOURCES	86
CRESTONE PEAK RESOURCES	73	RESOLUTE ENERGY CORPORATION	100
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Hi David,

I did and Sarah has been very helpful. We have ruled out any concerns with BHFS. They are not a sponsor of the Summit--I had to actually clear the browser history on my computer to get to a more recent version of the Summit website that does not show BHFS being a sponsor. The firm is listed in the event's program book as a sponsor of the golf tournament for COGA members being held about 39 miles away from the Summit on the day before the Summit begins. Sarah clarified, however, that the firm had to be a "sponsor" of the tournament in order to participate in the tournament and the firm has a foursome playing. Moreover, there is no speaking engagement at the tournament, and tournament participation does not entitle one to access or benefits for the Summit. Under these circumstances, I do not believe that the firm's participation in or sponsorship of the golf tournament constitutes sponsorship of the Summit.

There is a question, however, with respect to Noble's participation in the Summit. Chip Rimer is an SVP at Noble and is a co-chair of the Summit and a leader on the event steering committee. He was involved in planning and organizing the Summit, is highlighted in several places throughout the program book as a Noble SVP and/or Summit co-chair, including a full-page welcome letter from him to the attendees. He will also be involved in the conduct of the event. He will be recognized as Co-Chair, along with David Posner of EnVent Energy on Tuesday of the conference. The Conference Director will give some brief remarks of appreciation and ask him and David to come on stage to receive a small trinket. He'll also be giving "bumper remarks," which consist of introducing moderators and opening a session.

I actually just got off the phone with OGE and we discussed this matter for the second time today. Our discussion has helped me to come to a final opinion.

Your ethics agreement states that you won't participate in a party matter in which a former client is a party. OGE has viewed the decision to give an official speech as a particular matter involving the event sponsor as a specific party. They have also indicated that, while simply providing financial support to an event does not make an organization a sponsor of the event for ethics purposes, if an organization is involved in the organization, planning, and conduct of an event, the organization is considered a sponsor of the event. In my opinion, based on Noble's participation in the organization, planning, and conduct of the Summit, they are considered a sponsor of the Summit for the purposes of your ethics agreement. Since Noble is a sponsor, they are considered a party to this request for you to speak. And since they are you



Sep 21, 2017 # Groups Call for Action on American Burying Beetle

Coalition files lawsuit against federal government for failing to issue a timely determination on beetle's status.

WASHINGTON, D.C. – The Independent Petroleum Association of America (IPAA), American Stewards of Liberty (ASL), and Osage Producers Association have filed a lawsuit today against the U.S. Fish and Wildlife Service regarding its failure to issue a required 12-month finding on a petition to remove the American burying beetle from the endangered species list.

Today's action follows IPAA and ASL's previous filing of a Notice of Intent to sue the Service in February 2017 for violation of the Endangered Species Act (ESA) based on its failure to render a timely 12-month finding on an August 2015 petition filed with the agency. The Service was required to determine if delisting is "warranted" within 12 months of receipt of the petition, yet it has failed to act.

"It is time for the Fish and Wildlife Service to act on the American burying beetle," **said Dan Naatz, senior vice president of government relations and political affairs at IPAA, after the suit was filed**. "Since 1989, the beetle's listing has been met with criticism for failing to provide the science-based evidence that ESA listings warrant. The Service has had the time to properly review and act on our petition and it's time to move forward. The economies and communities impacted by this listing deserve it."

"The Service has prioritized the radical environmental 'sue and settle' agenda, which seeks to add more species to the list, over the sound science proving the American burying beetle warrants removal," **commented Margaret Byfield, executive director of American Stewards of Liberty**. "The Southwest Regions failure to comply with the law is harming hard working Americans." Acting Regional Director Joy Nicholopulos informed petitioners in a letter dated April 24, 2017, that the Service was delaying action on the American burying beetle in order to prioritize decisions for the 250 plus species the radical environmental activists have advocated be listed.

"The American burying beetle prospers in Osage County. In 2016, the U.S. Fish and Wildlife Service reported 57 positive surveys counting 437 American burying beetles," **stated James Sicking, attorney for the Osage Producers Association.** "The policies of the Service and the Oklahoma field office regarding the American burying beetle are a major impediment to our members fulfillment of contractual obligations to produce oil and gas for the benefit of the Osage Indian Headlight Holders and the Mineral Estate in general."

For several years now, IPAA, ASL, and other industry and government groups have called to delist the American burying beetle. In an August 2015 delisting petition, ASL, IPAA, and the Texas Public Policy Foundation demonstrated that the original listing was in error and was rooted in faulty assumptions about the species' range, distribution, and abundance.

Many land development, agriculture, transportation, and pipeline or utility operations have been delayed or restricted due to the presence of the beetle. Over the last 20 years in the state of Oklahoma alone, the beetle has cost at least $6.5 million in protection efforts, including $1.3 million that the Oklahoma Department of Transportation spent on conservation actions during a six-year period. According to the U.S. Fish and Wildlife Service's own findings, the beetle species is believed to occur in ten states in several distinct geographical regions of the United States: Arkansas, Kansas, Massachusetts, Missouri, Nebraska, Ohio, Oklahoma, Rhode Island, South Dakota, and Texas.

Learn more about the effort to delist the American burying beetle.

About the Independent Petroleum Association of America
The Independent Petroleum Association of America (IPAA) is a national upstream trade association representing thousands of independent oil and natural gas producers and service companies across the United States. Independent producers develop 90 percent of the nation's oil and natural gas wells. These companies account for 54 percent of America's oil production, 85 percent of its natural gas production, and support over 2.1 million American jobs. Learn more about IPAA by visiting www.ipaa.org and following @IPAAaccess on Twitter.

About American Stewards of Liberty
American Stewards of Liberty (ASL) is a 501(c)(3) non-profit organization dedicated to protecting private property that works closely with local governments and landowners across America, including: County Commissions, Conservation Districts, business owners, family farmers, ranchers, and homeowners who simply want to exercise the right to

family farmers, ranchers, and homeowners who simply want to exercise the right to productively use their land. For more information, visit: www.americanstewards.us.

About the Osage Producers Association

The Osage Producers Association has over 150 members, oil and gas operators and service companies, who operate in Osage County Oklahoma. The Association is a forum and voice on issues vital to the economic interests of its members. This frequently requires objections to the policies, procedures, and regulations administered by the Osage Agency, Bureau of Indian Affairs, and the US Fish and Wildlife Service.

News Media Contact

Neal Kirby

202.857.4722

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Conversation Contents

Invitation: Internal Meeting @ Mon Jul 16, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)

Attachments:

/13. Invitation: Internal Meeting @ Mon Jul 16, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.1 invite.ics
/13. Invitation: Internal Meeting @ Mon Jul 16, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.2 invite.ics

David Bernhardt (b) (6) @ios.doi.gov>

From:	David Bernhard (b) (6) ios.doi.gov>
Sent:	Thu Jul 12 2018 13:31:50 GMT-0600 (MDT)
To:	edward.mcdonnell@sol.doi.gov
Subject:	Invitation: Internal Meeting @ Mon Jul 16, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)
Attachments:	invite.ics invite.ics

Internal Meeting more details »

When Mon Jul 16, 2018 11:30am – 12pm Eastern Time

Where Room 6114 (map)

Calendar edward.mcdonnell@sol.doi.gov

Who
- (b) (6) ios.doi.gov - organizer
- gareth_rees@ios.doi.gov - creator
- edward.mcdonnell@sol.doi.gov

Going? **Yes** - **Maybe** - **No** more options »

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Created: 08-21-2018 at 07:06 AM

Conversation Contents

Invitation: Internal Meeting @ Tue Jul 31, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)

Attachments:

/10. Invitation: Internal Meeting @ Tue Jul 31, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.1 invite.ics
/10. Invitation: Internal Meeting @ Tue Jul 31, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.2 invite.ics

David Bernhard (b) (6) @ios.doi.gov>

From:	David Bernhardt <(b) (6) @ios.doi.gov>
Sent:	Mon Jul 30 2018 14:41:36 GMT-0600 (MDT)
To:	edward.mcdonnell@sol.doi.gov
Subject:	Invitation: Internal Meeting @ Tue Jul 31, 2018 11:30am - 12pm (EDT) (edward.mcdonnell@sol.doi.gov)
Attachments:	invite.ics invite.ics

Internal Meeting more details »

When Tue Jul 31, 2018 11:30am – 12pm Eastern Time - New York

Where Room 6114 (map)

Calendar edward.mcdonnell@sol.doi.gov

Who
- (b) (6) ios.doi.gov - organizer
- gareth_rees@ios.doi.gov - creator
- edward.mcdonnell@sol.doi.gov

Going? **Yes** - **Maybe** - **No** more options »

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Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:12 AM

Conversation Contents

Ford's Theater Gala gift/donation

"Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>

From:	"Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>
Sent:	Fri Jun 01 2018 13:03:55 GMT-0600 (MDT)
To:	David Bernhardt (b) (6) t@ios.doi.gov>
CC:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>, Timothy Murphy <timothy.murphy@sol.doi.gov>, Edward Keable <edward.keable@sol.doi.gov>, Daniel Jorjani <daniel.jorjani@sol.doi.gov>, Gareth Rees <gareth_rees@ios.doi.gov>
Subject:	Ford's Theater Gala gift/donation

Hi David,

Ethics let us know yesterday that you and your wife will be attending the Ford's Theater 2-day event next weekend, June 9-10. We understand that Ethics has raised some potential issues regarding accepting the two tickets (worth $15,000 total) offered by the event sponsor, the Ford's Theater Society, under one of the gift exceptions.

Ethics has asked General Law if the Department could accept the tickets as a donation.

We believe that we could accept the donation of the tickets under the donation authority provided by the Take Pride in America (TPIA) Act. The TPIA Act broadly provides the Department with the authority to work, in cooperation with public and private organizations and individuals, to instill in the public the importance of the appropriate use of, and appreciation for, Federal, State, and local lands, facilities, and natural and cultural resources; to promote an attitude of stewardship toward them; and to promote participation in caring for them.

In order to accept the donation under this authority, however, we think it would be appropriate for you to have some visible public role, however limited, in the event. We believe this role could simply consist of very brief remarks stating the importance and value of Ford's Theater as a national historical and cultural resource.

Could you let us know whether you are willing to make such remarks? If you are, we expect that your scheduler will have to coordinate with the event sponsor about whether they can arrange for an appropriate moment during the event for your comments.

Thank you,
Jennifer

Jennifer A. Heindl

Attorney Advisor

Office of the Solicitor

Division of General Law

Branch of General Legal Services

Voice: 202-208-7094

Fax: 202-219-1790

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Fri Jun 01 2018 13:05:59 GMT-0600 (MDT)
To:	"Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>
Subject:	Re: Ford's Theater Gala gift/donation

Thanks, Jennifer.

- Stewardship for America with Integrity and Excellence -

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6) [redacted]

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Fri, Jun 1, 2018 at 3:03 PM, Heindl, Jennifer <jennifer.heindl@sol.doi.gov> wrote:

> Hi David,
>
> Ethics let us know yesterday that you and your wife will be attending the Ford's Theater 2-day event next weekend, June 9-10. We understand that Ethics has raised some potential issues regarding accepting the tw (b) ckets (worth $15,000 total) offered by the event sponsor, the Ford's Theater Society, under one of the gift exceptions.
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>
> In order to accept the donation under this authority, however, we think it would be appropriate for you to have some visible public role, however limited, in the event. We believe this role could simply consist of very brief remarks stating the importance and value of Ford's Theater as a national historical and cultural resource.
>
> Could you let us know whether you are willing to make such remarks? If you are, we expect that your scheduler will have to coordinate with the event sponsor about whether they can arrange for an appropriate moment during the event for your comments.
>
> Thank you,
> Jennifer
>
> Jennifer A. Heindl
>
> Attorney Advisor
>
> Office of the Solicitor
>
> Division of General Law
>
> Branch of General Legal Services
>
> Voice: 202-208-7094
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"Bernhardt, David" (b) (6) @ios.doi.gov>

From: "Bernhardt, David" (b) (6) @ios.doi.gov>
Sent: Fri Jun 01 2018 15:28:27 GMT-0600 (MDT)
To: "Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>
Edward McDonnell <edward.mcdonnell@sol.doi.gov>, Timothy Murphy <timothy.murphy@sol.doi.gov>, Edward Keable

CC:	<edward.keable@sol.doi.gov>, Daniel Jorjani <daniel.jorjani@sol.doi.gov>, Gareth Rees <gareth_rees@ios.doi.gov>
Subject:	Re: Ford's Theater Gala gift/donation

Jennifer:

Thank you for the email. I had received a request to surrogate an event at Ford's Theater for the Secretary. I had not decided to attend. Instead, as part of the standard practice of any invitation to an event, my first question is what had the Office of the Ethics said, if anything, regarding this invitation? Therefore, my office reached out to the Office of the Ethics. Although I am aware that prior Secretaries have attended this event in prior years, including Secretary Jewell, I do not think the Take Pride in America authority has served as the basis for the attendance.

Instead, it is my understanding that it appears that the Ethics Office cleared the attendance based on their understanding that the event's cost was $500.00, or less. Ethics can confirm both their prior rationale and the basis for their prior decisions. At first blush, the Take Pride Authority construct looks like a stretch that I doubt the statute was actually intended for. I agree that the authority is broad, however, I certainly do not feel comfortable asking someone to manufacture an outcome to try to fit a square peg in a round hole.

I will simply decline the invitation, and explain that the Ethics Office provided information that caused me some concern and that the prior authorization simply does not gel with our current understanding of ethics compliance.

Best,
David

On Fri, Jun 1, 2018 at 3:03 PM, Heindl, Jennifer <jennifer.heindl@sol.doi.gov> wrote:

> Hi David,
>
> Ethics let us know yesterday that you and your wife will be attending the Ford's Theater 2-day event next weekend, June 9-10. We understand that Ethics has raised some potential issues regarding accepting the two tickets (worth $15,000 total) offered by the event sponsor, the Ford's Theater Society, under one of the gift exceptions.
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>
> Thank you,
> Jennifer
>
> Jennifer A. Heindl
>
> Attorney Advisor

Office of the Solicitor

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--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
(202) 208-6291

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Created: 08-21-2018 at 07:08 AM

Conversation Contents

Invitation: Internal Meeting @ Mon Jun 18, 2018 4:15pm - 4:45pm (EDT) (edward.mcdonnell@sol.doi.gov)

Attachments:

/16. Invitation: Internal Meeting @ Mon Jun 18, 2018 4:15pm - 4:45pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.1 invite.ics
/16. Invitation: Internal Meeting @ Mon Jun 18, 2018 4:15pm - 4:45pm (EDT) (edward.mcdonnell@sol.doi.gov)/1.2 invite.ics

David Bernhardt (b) (6) @ios.doi.gov>

From:	David Bernhardt <(b) (6) t@ios.doi.gov>
Sent:	Mon Jun 18 2018 07:51:15 GMT-0600 (MDT)
To:	edward.mcdonnell@sol.doi.gov, scott.delavega@sol.doi.gov
Subject:	Invitation: Internal Meeting @ Mon Jun 18, 2018 4:15pm - 4:45pm (EDT) (edward.mcdonnell@sol.doi.gov)
Attachments:	invite.ics invite.ics

Internal Meeting more details »

When Mon Jun 18, 2018 4:15pm – 4:45pm Eastern Time

Where Room 6114 (map)

Calendar edward.mcdonnell@sol.doi.gov

Who
- (b) (6) @ios.doi.gov - organizer
- gareth_rees@ios.doi.gov - creator
- scott.delavega@sol.doi.gov
- edward.mcdonnell@sol.doi.gov

Going? Yes - Maybe - No more options »

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Aqualliance v. Reclamation

1 message

Middleton, Brandon <brandon.middleton@sol.doi.gov> Thu, Jun 28, 2018 at 3:23 PM
To: "Gottry, Heather" <heather.gottry@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Cc: Scott de la Vega <scott.delavega@sol.doi.gov>

Hi Heather and Ed,

I wanted to make sure there are no recusal issues for the Dep Sec relating to Aqualliance v. Reclamation (1:15-cv-754-LJO-BAM, E.D. Cal.). In that case, Aquallliance successfully challenged Interior and the San Luis and Delta-Mendota Water Authority's 10-year water transfer program to transfer to move water from sellers located upstream of the Sacramento/San Joaquin Delta to willing buyers south of the Delta. The parties are due to enter a proposed judgment tomorrow.

I understand the Dep Sec is currently recused from particular maters in which Westlands Water District is a party to the matter. Westlands is not a party to the matter per the docket, but is a member of defendant San Luis and Delta-Mendota Water Authority, along with several other member water districts.

http://www.sldmwa.org/learn-more/about-us/

Can you please confirm whether the Dep Sec is recused from this matter?

Thank you.

Brandon M. Middleton
Deputy Solicitor for Water Resources
United States Department of the Interior
202.208.5388
brandon.middleton@sol.doi.gov

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

1 message

Rees, Gareth <gareth_rees@ios.doi.gov> Tue, May 29, 2018 at 1:31 PM
To: Margaret Connors <margaret.connors@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>

David is likely to say yes to do this so wanted to get down to you asap. Thanks

---------- Forwarded message ----------
From: **Erik Milito** <militoe@api.org>
Date: Tue, May 29, 2018 at 1:11 PM
Subject: RE: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC
To: "Rees, Gareth" <gareth_rees@ios.doi.gov>

Gareth,

Please attached for the form, and an additional document that I reference in the form itself.

Thanks.

Erik

From: Rees, Gareth <gareth_rees@ios.doi.gov>
Sent: Tuesday, May 29, 2018 11:14 AM
To: Erik Milito <militoe@api.org>
Subject: Re: [EXTERNAL] Invitation for Mr. Bernhardt to meet with API Upstream Committee on July 17th in DC

Hi Erik

Thank you for the request. Would you be able to complete the attached form. Once I have received the completed form, I will run it through Ethics and get back to you.

thanks

Gareth

On Thu, May 24, 2018 at 3:15 PM, Erik Milito <militoe@api.org> wrote:

Gareth,

API's Upstream Committee will be in DC on July 17th and it would be great if Mr. Bernhardt could join us as a guest speaker. The committee is comprised of executives from the companies listed in the attachment, and the committee is responsible for overseeing U.S. exploration and production policy efforts. The meeting will be from 8:00 am until 2:00 pm at API headquarters, located at 1220 L Street NW. We could accommodate Mr. Bernhardt during whatever time block is best for him. Our guest speakers from Interior normally give a 20-25 minute presentation and then we leave 20-25 minutes for question and answer.

Please let me know if this can be arranged.

Thank you.

Best regards,

Erik

Erik Milito

Group Director, Upstream & Industry Operations

American Petroleum Institute

1220 L Street, NW

Washington, DC 20005

Ph: (202) 682-8273

Fx: (202) 682-8426

militoe@api.org

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Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

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--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

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2 attachments

API Meeting Proposal Information Form Deputy Secretary.pdf
40K

Financial Assurance Summary API April 2018.pdf
31K

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Fri, Jul 6, 2018 at 4:23 PM
To: tdykstra@tfgnet.com

Hi Tina,

Gareth Rees forwarded your meeting request to our office for ethics review in light of David's recusal requirements. Would it be possible to get a more detailed description of the subjects that you and the water district representatives would like to discuss with David? For example, are there any documents or other information online regarding the biological opinion and reconsultation to which you could refer me?

Thank you very much for your time and consideration.

Ed

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Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313

Office: (202) 208-5916
Cell: [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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---------- Forwarded message ----------
From: **Gareth Rees** <gareth_rees@ios.doi.gov>
Date: Tue, Jul 3, 2018 at 12:45 PM
Subject: Fwd: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)
To: Margaret Connors <margaret.connors@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Hi,
David would like to do this if okay with Ethics.
Thanks

---------- Forwarded message ---------
From: **Tina Dykstra** <tdykstra@tfgnet.com>
Date: Wed, Jun 27, 2018 at 10:27 AM
Subject: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)
To: Rees, Gareth <gareth_rees@ios.doi.gov>
Cc: Christopher B. Kearney <CKearney@tfgnet.com>

Hi Gareth –

I trust all is well with you! Hope you are enjoying the summer months!

Attached please find the completed form for a meeting with Mr. Bernhardt for the Friant Water Authority.

They will be in WDC on July 10th and 11th and would appreciate the opportunity for a meeting.

Thank you for your time and consideration.

I look forward to your reply.

Best,

Tina

Tina Dykstra
202.261.6013 OFFICE
(b) (6) MOBILE
1901 Pennsylvania Ave. NW, Suite 700, Washington, DC 20006
TheFergusonGroup.com

--

Gareth C. Rees

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DS Bernhart FWA Request.docx
29K

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: Aqualliance v. Reclamation

1 message

Gottry, Heather <heather.gottry@sol.doi.gov> Fri, Jun 29, 2018 at 10:04 AM
To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Cc: Scott De La Vega <scott.delavega@sol.doi.gov>

Ed - I know that you are more familiar with scope of the deputy Secretary's recusals, but wanted tot ouch base to see if you wanted to discuss the question below. Please let me know. Thanks.

- Heather

---------- Forwarded message ----------
From: **Middleton, Brandon** <brandon.middleton@sol.doi.gov>
Date: Thu, Jun 28, 2018 at 3:23 PM
Subject: Aqualliance v. Reclamation
To: "Gottry, Heather" <heather.gottry@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Cc: Scott de la Vega <scott.delavega@sol.doi.gov>

Hi Heather and Ed,

I wanted to make sure there are no recusal issues for the Dep Sec relating to Aqualliance v. Reclamation (1:15-cv-754-LJO-BAM, E.D. Cal.). In that case, Aquallliance successfully challenged Interior and the San Luis and Delta-Mendota Water Authority's 10-year water transfer program to transfer to move water from sellers located upstream of the Sacramento/San Joaquin Delta to willing buyers south of the Delta. The parties are due to enter a proposed judgment tomorrow.

I understand the Dep Sec is currently recused from particular maters in which Westlands Water District is a party to the matter. Westlands is not a party to the matter per the docket, but is a member of defendant San Luis and Delta-Mendota Water Authority, along with several other member water districts.

http://www.sldmwa.org/learn-more/about-us/

Can you please confirm whether the Dep Sec is recused from this matter?

Thank you.

Brandon M. Middleton
Deputy Solicitor for Water Resources
United States Department of the Interior
202.208.5388
brandon.middleton@sol.doi.gov

--
Heather Gottry
Deputy Director, Departmental Ethics Office
U.S. Department of the Interior
(O) (202) 208-4472
(C) (202) 740-0417
heather.gottry@sol.doi.gov
Visit us online at: www.doi.gov/ethics

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: SPEAKING REQUEST, November 9: Secretary Zinke at Heartland Institute's Energy Conference

1 message

Rees, Gareth <gareth_rees@ios.doi.gov> Tue, Sep 26, 2017 at 4:56 PM
To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Ed

If David does this, do you anticipate an issue. It is likely there could be several people from companies he is recused from meeting with but as this is a large speaking event, he would not be discussing party issues but of course I need to check.

Thanks

Gareth

---------- Forwarded message ----------
From: **SIO, Scheduling** <scheduling_sio@ios.doi.gov>
Date: Tue, Sep 26, 2017 at 4:18 PM
Subject: Fwd: SPEAKING REQUEST, November 9: Secretary Zinke at Heartland Institute's Energy Conference
To: Todd Willens <todd_willens@ios.doi.gov>, Gareth Rees <gareth_rees@ios.doi.gov>

When you have a second, can you please let me know if the Deputy would be willing to speak to them?

---------- Forwarded message ----------
From: **Jim Lakely** <JLakely@heartland.org>
Date: Thu, Aug 17, 2017 at 6:32 PM
Subject: SPEAKING REQUEST, November 9: Secretary Zinke at Heartland Institute's Energy Conference
To: "Scheduling@ios.doi.gov" <Scheduling@ios.doi.gov>
Cc: Fred Palmer <FPalmer@heartland.org>, "downey.magallanes@gmail.com" <downey.magallanes@gmail.com>

Greetings,

I am writing with a special request. The Heartland Institute would be honored if Secretary Zinke would accept a keynote speaking slot at our America First Energy Conference in Houston, Texas on Thursday, November 9, 2017.

The conference's purpose, as the name suggests, is to promote the Trump administration's excellent agenda on that topic – one that abandons the dead-end "green energy" push of the Obama years. Especially because the president wants to make America a global power again in energy production, we selected the hub of our energy sector in Houston as the conference city.

We expect an audience of several hundred energy industry leaders at Houston's J.W. Marriott Galleria – as well as a healthy contingent of media – and we've reserved one of our three plenary keynotes for Secretary Zinke: 8 a.m, noon, or 7 p.m. (NOTE: If Thursday, November 9 is not ideal for the secretary's schedule, Heartland is also hosting an "Emerging Issues Forum" for more than 100 key state legislators at the same location the day before. Secretary Zinke could give a keynote dinner address to that audience, instead.)

I'd be happy to share our very rough draft of the American First Energy Conference schedule with you. The website we've created for our conference is AmericaFirstEnergy.org. It contains the broadest of outlines of our plans, and gives an indication of how it will be promoted.

We hope Secretary Zinke has room on his schedule for this event, and look forward to hearing back. Please feel free to contact me at any time on my cell (312-731-9364) or via a reply to this email with any questions.

Regards,

Jim Lakely
Director of Communications
The Heartland Institute
3939 North Wilke Drive

Arlington Heights, IL 60004

o: 312.377.4000
c: 312-731-9364
Twitter: @HeartlandInst

--

Leila Sepehri Getto
U.S. Department of the Interior
Immediate Office of the Secretary
Deputy Director, Scheduling and Advance
Direct: (202) 208-5359
Cell: (202) 706-9435

--

Gareth C. Rees

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: Tour of Dry Tortugas National Park

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Wed, Mar 28, 2018 at 11:40 AM
To: "Spector, Rachel" <rachel.spector@sol.doi.gov>, "Connors, Margaret" <margaret.connors@sol.doi.gov>, "Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>, Jennifer Heindl <jennifer.heindl@sol.doi.gov>

All,

FYI.

Thanks,
Ed

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Ed McDonnell

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---------- Forwarded message ----------
From: **McDonnell, Edward** <edward.mcdonnell@sol.doi.gov>
Date: Wed, Mar 28, 2018 at 11:39 AM
Subject: Re: Tour of Dry Tortugas National Park
To: David Bernhardt <(b) (6) ios.doi.gov>
Cc: "Rees, Gareth" <gareth_rees@ios.doi.gov>

Thanks very much, David.

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On Wed, Mar 28, 2018 at 11:21 AM, David Bernhardt <(b) (6) ios.doi.gov> wrote:

We will not be taking a NPS vessel anywhere, and will avoid any "special treatment."

Sent from my iPhone

On Mar 28, 2018, at 11:13 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

Thanks very much, David.

Yes, you are correct. I just want to add, though I believe you already aware of this, that family members should not receive any special treatment from NPS personnel while participating in NPS activities that the public may otherwise participate in.

Also, just for the record, I understand that neither you nor your family members will be taking the small boat over to Loggerhead Key for any activities, is that correct?

Thanks,
Ed

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On Wed, Mar 28, 2018 at 11:02 AM, David Bernhardt <(b) (6) [redacted] ios.doi.gov> wrote:

> Gareth and Ed: Thanks for the email. I have talked to ED I was concerned when I saw the small boat on the itinerary yesterday, which is why I requested the ethics review.
>
> In order to avoid any question of misuse of position I have already paid $600 for my family to take advantage of the commercial tour that is available.
>
> It is my understanding that my family and I can take advantage of that commercial tour package AND my family can take advantage of anything else the NPS offers to the general public.
>
> The point is that we can not have them do anything that the public is unable to do.
>
> Ed please correct me if that understanding is wrong.
>
> In addition, I can break away from my family to review the facilities in need of repair, NPS equipment etc. while I'm there as part of my official duties.
>
> However, my family is not to participate in those work related activities.
>
> Sent from my iPhone
>
> On Mar 28, 2018, at 10:22 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:
>
> > David,
> >
> > Below is the response from Ethics
> >
> > Gareth
> >
> > ---------- Forwarded message ----------
> > From: **McDonnell, Edward** <edward.mcdonnell@sol.doi.gov>
> > Date: Wed, Mar 28, 2018 at 10:03 AM
> > Subject: Re: Tour of Dry Tortugas National Park
> > To: "Rees, Gareth" <gareth_rees@ios.doi.gov>
> > Cc: "Connors, Margaret" <margaret.connors@sol.doi.gov>, "Spector, Rachel" <rachel.spector@sol.doi.gov>, Jennifer Heindl <jennifer.heindl@sol.doi.gov>, "Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>
> >
> > Hi Gareth,
> >
> > I left you a voicemail last night and sent you an email asking that we talk first thing this morning as there were additional considerations I wanted to discuss.
> >
> > 5 CFR 2635.702(a) states that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or

persons with whom the employee is affiliated in a nongovernmental capacity. Moreover, General Principle 14 states that Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

David's treatment as an employee should be based on mission considerations. He should not receive special non-mission-related treatment as a perquisite of his position. David's family members should be treated the same as the general public, unless otherwise authorized by law.

My concerns in this case are two-fold.

First, while David may choose to conduct an official visit to Dry Tortugas, having his children accompany him may constitute a benefit to him and his children that they receive based on his position. Any treatment that the children receive that a member of the general public wouldn't receive may constitute such a benefit. This may apply, in particular, to the (NPS?) boat trip to Loggerhead Key, the walking tour of that island, and the guided snorkeling tour of the Little Africa coral reef area. It would also apply, however, to any special treatment the children may receive on the main island.

My second concern is with appearances. Cabinet Secretaries, including our own, are in the media and they are being questioned and investigated regarding their travel. David's travel could also be scrutinized. Even if everything is perfectly legal and defensible, that defense may take time, effort, and resources away from other priorities.

I offer a couple of options.

First, David could choose to make the trip to Dry Tortugas, with his children, purely in his personal capacity. That would mean that he would likely not be able to use NPS resources to get to, or while on, Loggerhead Key.

Second, he could choose to conduct an official visit to Dry Tortugas, during which he, but not the children, could participate in the activities listed in the previous email. If the children accompany him to the main island on the commercial ferry, they would essentially be on their own to visit the main island while David conducts his official activities. Or perhaps Mrs. Bernhardt might choose to go to the main island and she and the children could engage in whatever activities a member of the general public could participate while on the island.

Please let me know if you or David have questions or would care to discuss.

Thanks very much,
Ed

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On Mon, Mar 26, 2018 at 1:25 PM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> Good Afternoon,
>
> Deputy secretary Bernhardt is currently (b) (6) [redacted] He will be conducting a few official meetings with NPS employees whilst he is there. On Thursday March 29th, he will head to Dry Tortugas National Park where NPS has offered to give him a tour of the park where they will be discussing the maintenance backlog and the impact of the hurricane season. A breakdown of the tour is listed below. Please note that Mr. Bernhardt be covering the cost of himself and children for transportation, meals and any equipment that may need to be rented. He asked that I run this through SOL/Ethics to make sure there are no problems. If you need any further information, please let me know. Thanks
>
> Thursday March 29

0715-0800 Arrive at Key West Ferry Terminal, Check-In, Boarding 0730

0800-1030 Commercial ferry *Yankee Freedom III* from Key West to Park, breakfast provided

1030-1100 Greetings with Glenn Simpson, Park Manager (cell) (b) (6) at Main Dock, take lunches to go from ferry

1100-1315 Small boat trip with Glenn Simpson to Loggerhead Key, walking tour of island guided snorkel tour of Little Africa coral reef area

1315-1415 Walking tour of Fort Jefferson and park operations, discuss deferred maintenance and key park issues

1415-1430 Close-out discussions at park main dock, board ferry

1445-1730 Ferry from Park back to Key West

1730 End of day's activities

--

Gareth C. Rees

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: [EXTERNAL] Coal and Investment Leadership Forum

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Fri, May 25, 2018 at 3:38 PM
To: "Bernhardt, David" <(b) (6) ios.doi.gov>
Cc: "Getto, Leila" <leila_getto@ios.doi.gov>, Matthew Dermody <matthew_dermody@ios.doi.gov>

Thank you very much, David.

Have a great holiday weekend!

Ed

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On Fri, May 25, 2018 at 3:35 PM, Bernhardt, David <(b) (6) [redacted]os.doi.gov> wrote:

> Ed: I really appreciate your input. Given your stated concerns, I think the most prudent course of action would be to not even attend the event. I was simply asked to surrogate if the Secretary could not do so.
>
> David
>
> On Fri, May 25, 2018 at 3:12 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:
>
> > Hi David,
> >
> > I'm sorry to ask this but the Secretary recently declined on this invitation and I was asked earlier today to advise today as to whether the ethics rules permitted your participation in the Secretary's stead.
> >
> > I don't know how much info you have on this but the Schedule of Events on the attached flyer looks quite light on substance and heavy on non-substantive events, while providing CEOs of coal companies lengthy, informal access to you and other important, influential people. The registration fee for the event is $6,000, which the Department would likely be able to accept as a travel-related gift under 31 USC 1353. However, we would then have to report the gift to OGE, who would then forward the report to Congress.
> >
> > I understand that you would be speaking at 8:00 during Monday night's dinner at the Party Barn.
> >
> > While making an official DOI mission-related presentation to such an audience is generally permissible under the ethics rules, and participation in the non-substantive events may even be technically legal under the statute, I believe that participation in the non-substantive aspects of this event, even if only on the day you present, would raise appearance concerns. Accordingly, if you would like to speak at this event, I would strongly recommend that you limit your participation to the substantive portions of the program - perhaps arriving Monday afternoon, speaking at the dinner, and either forgoing the Tuesday morning program or, at most, staying only to or through lunch on Tuesday.
> >
> > Is it possible for you to let me know your plans so that I can respond on this today?
> >
> > Thank you very much,
> > Ed
>
> *- Stewardship for America with Integrity and Excellence -*
>
> *--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---*
>
> Ed McDonnell
>
> Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
> U.S. Department of the Interior
>
> *Departmental Ethics Office*
>
> *Office of the Solicitor*
>
> E-mail: edward.mcdonnell@sol.doi.gov
> Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6)

Mailing Address:
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Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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---------- Forwarded message ----------
From: **Catherine Gulac** <catherine_gulac@ios.doi.gov>
Date: Fri, May 25, 2018 at 1:26 PM
Subject: Fwd: [EXTERNAL] Coal and Investment Leadership Forum
To: Margaret Connors <margaret.connors@sol.doi.gov>, "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>, Kimberly Hintz <kimberly.hintz@sol.doi.gov>
Cc: Gareth Rees <gareth_rees@ios.doi.gov>, "Getto, Leila" <leila_getto@ios.doi.gov>, Matthew Dermody <matthew_dermody@ios.doi.gov>

Markee,
Here is the information I received for the Coal and Investment Leadership Forum. Mr. Eige will be getting back with the cost of the dinner on Monday night. That is the event at which Deputy Secretary David Bernhardt will be the keynote speaker. There is no sponsor for this form. There will be about 60 attendees (owners and CEOs of coal companies). This is not a 401(c)3 organization. This event is closed to the press.
I will complete the DI-2000 when I get the cost of the dinner. The 3-day weekend is $6,000, but Mr. Bernhardt is only attending the dinner on Monday.

Are you able to start reviewing with this information and with the information in your email? You said that Mr. Bernhardt wants to know by today if he can do this event.
Thanks.
Cathy

Catherine Gulac
U.S. Department of the Interior
Office of the Deputy Secretary
1849 C St, NW, MS-7328
Washington, D.C. 20240
202-208-6291 Office / 202-208-1739 Direct / 202-208-1873 Fax
Catherine_Gulac@ios.doi.gov

---------- Forwarded message ---------
From: Jasen Eige <jeige@unitedco.net>
Date: Fri, May 25, 2018 at 12:31 PM
Subject: [EXTERNAL] Coal and Investment Leadership Forum
To: catherine_gulac@ios.doi.gov <catherine_gulac@ios.doi.gov>
Cc: leila_getto@ios.doi.gov <leila_getto@ios.doi.gov>, gareth_rees@ios.doi.gov <gareth_rees@ios.doi.gov>

Catherine,

Thank you for your call today. Please find attached the information re. the Coal and Investment Leadership Forum. The cost for the entire three-day weekend is $6,000. I will get the estimated cost for the Monday (June 4) dinner and will provide that to you shortly. Regarding accommodations, I would recommend the following hotels in Bristol, VA (exit 7 off of I-81) based on their proximity to the event. There are other options and I am happy to assist you in locating more options if needed. There are also some hotels in Abingdon, VA that are approximately the same distance from the event.

https://www.marriott.com/hotels/travel/tricy-courtyard-bristol/?scid=bb1a189a-fec3-4d19-a255-54ba596febe2

https://www.ihg.com/holidayinn/hotels/us/en/bristol/brlva/hoteldetail?cm_mmc=GoogleMaps-_-HI-_-US-_-BRLVA

http://hiltongardeninn3.hilton.com/en/hotels/virginia/hilton-garden-inn-bristol-TRIGIGI/index.html

Thank you and please let me know if you need any additional information. We look forward to Deputy Secretary Bernhardt's visit for our June 4 dinner (reception starts at 6:30pm, dinner and keynote address starts at 7:30pm).

Jasen

J. Jasen Eige

Vice President and General Counsel

The United Company

1005 Glenway Ave.

Bristol, Virginia 24201-3473

Office: (276) 645-1444

Mobile: (b) (6)

--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
(202) 208-6291

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Tue, Jul 10, 2018 at 3:39 PM
To: Gareth Rees <gareth_rees@ios.doi.gov>
Cc: Margaret Connors <margaret.connors@sol.doi.gov>

Hi Gareth,

After review, we have determined that there is no legal objection under the ethics statutes and regulations, or the administration ethics pledge, to the Deputy Secretary accepting this meeting.

We recommend that the meeting remain focused on general topics, and that the Deputy Secretary refrain from making any commitments about any particular matters involving specific parties, such as litigation, contracts, leases, permits, etc. at this meeting.

If, during the meeting, it becomes apparent that BHFS represents a party to a matter under discussion or that a former client of David's is a party to a matter under discussion, he should cease discussion of that matter.

Please do not hesitate to let us know if it would be helpful to discuss further, or if we can be of any additional assistance.

Thanks,
Ed

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Ed McDonnell

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On Tue, Jul 3, 2018 at 12:45 PM, Gareth Rees <gareth_rees@ios.doi.gov> wrote:

> Hi,
> David would like to do this if okay with Ethics.
> Thanks
>
> ---------- Forwarded message ---------
> From: **Tina Dykstra** <tdykstra@tfgnet.com>
> Date: Wed, Jun 27, 2018 at 10:27 AM
> Subject: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)
> To: Rees, Gareth <gareth_rees@ios.doi.gov>
> Cc: Christopher B. Kearney <CKearney@tfgnet.com>
>
> Hi Gareth –
>
> I trust all is well with you! Hope you are enjoying the summer months!
>
> Attached please find the completed form for a meeting with Mr. Bernhardt for the Friant Water Authority.
>
> They will be in WDC on July 10th and 11th and would appreciate the opportunity for a meeting.
>
> Thank you for your time and consideration.
>
> I look forward to your reply.
>
> Best,
>
> Tina

Tina Dykstra
202.261.6013 OFFICE
(b) (6) MOBILE
1901 Pennsylvania Ave. NW, Suite 700, Washington, DC 20006
TheFergusonGroup.com

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6) [redacted]



McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: [EXTERNAL] Meeting Request Week of July 9th

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Tue, Jul 10, 2018 at 3:47 PM
To: Gareth Rees <gareth_rees@ios.doi.gov>
Cc: Margaret Connors <margaret.connors@sol.doi.gov>

Hi Gareth,

After review, we have determined that there is no legal objection under the ethics statutes and regulations, or the administration ethics pledge, to the Deputy Secretary accepting this meeting.

We recommend that the meeting remain focused on general topics, and that the Deputy Secretary refrain from making any commitments about any particular matters involving specific parties, such as litigation, contracts, leases, permits, etc. at this meeting.

If, during the meeting, it becomes apparent that BHFS represents a party to a matter under discussion or that a former client of David's is a party to a matter under discussion, he should cease discussion of that matter.

With respect to the possibility of meeting over a cup of coffee, an unsolicited offer of a cup of coffee, if proffered, would not constitute a prohibited gift as it would constitute a modest item of refreshment. I recommend, however, that David not accept any such offer and simply pay for his own coffee if he would like to have a cup.

Please do not hesitate to let us know if it would be helpful to discuss further, or if we can be of any additional assistance.

Thanks,
Ed

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Ed McDonnell

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On Thu, Jul 5, 2018 at 10:03 AM, Gareth Rees <gareth_rees@ios.doi.gov> wrote:

> Hi,
>
> David would like to take this meeting if cleared by Ethics.
>
> Thanks
>
> ---------- Forwarded message ---------
> From: **William Kelleher** <william@naturalresourceresults.com>
> Date: Mon, Jul 2, 2018 at 4:27 PM
> Subject: [EXTERNAL] Meeting Request Week of July 9th
> To: gareth_rees@ios.doi.gov <gareth_rees@ios.doi.gov>
> Cc: Mitch Butler <mitchbutler@naturalresourceresults.com>, jsutton@tccanal.com <jsutton@tccanal.com>

Hi Gareth,

On behalf of Jeff Sutton, General Manager of the Tehama-Colusa Canal Authority (TCCA), I am writing to request a quick fifteen minute meeting with the Deputy Secretary of the Interior, David Bernhardt, to discuss Central Valley Project (CVP) operations and FWS/NMFS re-consultation on CVP TCCA biological opinions. **Jeff has availability anytime on Tuesday, July 10th; Wednesday, July 11th; as well as on the morning of Thursday, July 12th.**

Joining Jeff will be Mitch Butler of Natural Resource Results. Additionally, Jeff is also available for a cup of coffee before or after business hours at location amendable to Mr. Bernhardt if he is available on any of the dates mentioned above.

I have also attached the meeting request information form to this email. Thank you in advance for your consideration of this request, I look forward to hearing back from you.

Best,

William K Kelleher

Natural Resource Results

601 13th St., NW (Suite 580)

Washington, D.C. 20005

Cell (b) (6)

www.naturalresourceresults.com

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6)



McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: DS Bernhardt - Quick recusal question

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Wed, Feb 28, 2018 at 9:39 AM
To: "Snow, Robert" <robert.snow@sol.doi.gov>
Cc: "Brown, Carter" <carter.brown@sol.doi.gov>, "Lacroix, David" <david.lacroix@sol.doi.gov>

Hi Bob,

As you can see from David's recusal (attached), he is subject to both 5 CFR 2635.502 and the administration ethics pledge with respect to Brownstein Hyatt. Accordingly, he may not participate in any particular matter involving a specific party or parties (including litigation) in which Brownstein Hyatt is or represents a party. This also includes any meeting or other communication with Brownstein Hyatt unless (1) there are five or more different stakeholders present and (2) no particular matters involving a specific party or parties are discussed. Accordingly, if we are able to determine whether Brownstein Hyatt represents any party in this litigation, we should do so and, if they do, David should not participate in the litigation per his recusal requirements.

CAWCD is not on David's recusal lists.

Please note that this does not address the potential application of any professional responsibility rules; it only pertains to the Federal ethics rules.

Thanks,
Ed

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Ed McDonnell

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On Tue, Feb 27, 2018 at 2:19 PM, Snow, Robert <robert.snow@sol.doi.gov> wrote:

+ Carter

Resending as I forgot to cc Carter Brown on this chain. Sorry ... Bob

---------- Forwarded message ----------
From: **Snow, Robert** <robert.snow@sol.doi.gov>
Date: Tue, Feb 27, 2018 at 2:18 PM
Subject: DS Bernhardt - Quick recusal question
To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Hi Ed - I'm hoping that things are quieting down a bit for you and don't want to add to your workload but I have a quick recusal question for you. Here's the question:

(b) (5) [redacted]

Based on the above, would you have sufficient information to determine whether or not DS Bernhardt is recused in discussions regarding this litigation?

Thanks,
Bob Snow

Bernhardt, David - Ethics Recusal.pdf
955K

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Ford's Theater

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Tue, Dec 19, 2017 at 10:41 AM
To: "Bernhardt, David" <(b) (6) os.doi.gov>
Cc: "Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>, Scott Currie <scott.currie@sol.doi.gov>

Hi David,

You and your family clearly have a personal friendship with this individual and his family. The personal relationship exception to both the Standards of Ethical Conduct gift ban and the lobbyist gift ban will permit you to accept the tickets for you and your family if your friend personally paid market value (face value) for the tickets or they were given without reservation to him to use as he wished, and his invitation to you and your family was motivated by the personal friendship between your families, and you and your family don't receive any special treatment beyond what any other purchaser of such a ticket would receive--for instance, special seating, non-public reception, private meeting with actors, etc.

Please note that the ethics rules require employees to consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question their integrity or impartiality as a result of accepting the gift. Some factors to consider are whether: the gift has a high market value, the timing of the gift creates the appearance that your friend is seeking to influence an official action, your friend has interests that may be substantially affected by the performance or nonperformance of your duties, and whether the gift would provide your friend with significantly disproportionate access.

As you would be attending as your friend's guest in your personal capacity, (b) (5)

Finally, given your personal relationship, if in the future you are asked to participate in a particular matter involving either Home Depot or Ford's Theatre Society, you should keep in mind the catch-all provision of the impartiality regulation that requires us to consider whether a reasonable person with knowledge of the relevant facts would question our impartiality in a given matter.

If you have any questions or would care to discuss, please let me know.

Thanks,
Ed

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Ed McDonnell

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On Mon, Dec 18, 2017 at 7:48 PM, David Bernhardt <(b) (6) ios.doi.gov> wrote:

> My wife, I and both my children have a longstanding friendship with a family with two children that are virtually identical to my kids ages.
>
> My wife and her friend met at a mommy and me yoga class during the Bush Administration so it's been over a decade. Since that time, our families have traveled together to Disney World and New York together. We visit them in Nantucket in the summer. Our boys go to the same multi-week camp each summer and have traveled together there. We regularly have their kids at our house for sleepovers and vice a versa.
>
> The husband is on the Board of Ford's theater and their family invited my wife, kids and me to attend a Christmas Carol at Ford's tomorrow night.
>
> The husband runs Home Depot's Government Affairs Office and is a lobbyist but the tickets are from them personally not his company.
>
> Given the long relationship, my wife and kids want to attend the show. The invite has nothing to do with my job at DOI. However, I want to make sure we do what's right.
>
> Therefore, I need to know whether my family can accept the tickets? Whether I should pay for the ticket; and if so, whether I pay for mine and all my families; or whether I'm simply precluded from attending?
>
> Thanks,
> David
>
> Sent from my iPhone

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Meeting Request from Randy Howard of Northern California Power Agency

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Wed, Sep 27, 2017 at 11:48 AM
To: "Rees, Gareth" <gareth_rees@ios.doi.gov>

Hi Gareth,

None of the parties identified in the request are on David's recusal lists; however, since this is a party matter, in which the parties are suing the US for damages based on BOR actions in connection with the CVP, I think that it should be brought to David's attention ASAP to give him the opportunity to consider whether a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. If he would like to discuss with me, please just let me know.

One other thing that I thought of is the possibility that there may be other parties to the matter, or affected by the matter, that have not been identified on the form. (b) (5) [redacted] Again, I'd be happy to talk with the water law folks if they have any questions or would care to discuss.

Thanks,
Ed

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Ed McDonnell

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On Wed, Sep 27, 2017 at 10:37 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:

> Wanted to quickly follow-up on this request. Thanks
>
> ---------- Forwarded message ----------
> From: **Rees, Gareth** <gareth_rees@ios.doi.gov>
> Date: Fri, Sep 15, 2017 at 10:50 AM
> Subject: Fwd: Meeting Request from Randy Howard of Northern California Power Agency
> To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>
>
> Any issues if David excepts this meeting?
>
> ---------- Forwarded message ----------
> From: **Steve Colen** <scolen@kannerandassoc.com>
> Date: Wed, Sep 6, 2017 at 12:05 PM
> Subject: RE: Meeting Request from Randy Howard of Northern California Power Agency
> To: "Rees, Gareth" <gareth_rees@ios.doi.gov>
>
> Gareth,
>
> Attached is the completed form. We look forward to your response!
>
> Stephen J. Colen
>
> Office Administrator
>
> Kanner & Associates, LLC
>
> 400 North Capital Street, N.W.
>
> Suite 594
>
> Washington, D.C. 20001
>
> P: (202) 624-3500
>
> F: (202) 624-3506
>
> http://www.kannerandassoc.com

From: Rees, Gareth [mailto:gareth_rees@ios.doi.gov]
Sent: Tuesday, August 29, 2017 11:24 AM
To: Steve Colen <scolen@kannerandassoc.com>
Subject: Re: Meeting Request from Randy Howard of Northern California Power Agency

Steve

Thanks for the email request a meeting with Deputy Secretary Bernhardt. There has been a slight change in requesting meetings. Could you complete the attached request form and return to me? I will then process it and get back to you as soon as I have a response.

Thanks

Gareth

On Fri, Aug 18, 2017 at 12:20 PM, Steve Colen <scolen@kannerandassoc.com> wrote:

> Gareth,
>
> Attached is a meeting request from Randy Howard, General Manager of the Northern California Power Agency. In short, Randy is available to meet either in D.C. or in California at your boss's earliest convenience.
>
> Please contact his assistant Cary Padgett of NCPA at: cary.padgett@ncpa.com or (916) 781-4202.
>
> Thank you for your time and consideration.
>
> Stephen J. Colen
>
> Office Administrator
>
> Kanner & Associates, LLC
>
> 400 North Capital Street, N.W.
>
> Suite 594
>
> Washington, D.C. 20001
>
> P: (202) 624-3500
>
> F: (202) 624-3506
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> http://www.kannerandassoc.com
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Gareth C. Rees

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Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6) [redacted]

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--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6) [redacted]

--

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U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6)

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Monuments

1 message

Edward McDonnell <edward.mcdonnell@sol.doi.gov> Sat, Sep 16, 2017 at 11:48 PM
To: David Bernhardt <(b) (6) ios.doi.gov>
Cc: Melinda J Loftin <Melinda.Loftin@sol.doi.gov>

You're welcome, David.

Sent from my iPhone

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Ed McDonnell

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On Sep 16, 2017, at 10:21 PM, David Bernhardt <(b) (6) ios.doi.gov> wrote:

Thanks Ed. Your recollection was helpful in refreshing mine regarding the conversation.

Sent from my iPhone

On Sep 16, 2017, at 9:43 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

Hi David,

I did some looking through my notes but did not yet find a reference to us discussing monuments. However, I do remember discussing them with you. I remember telling you that we had been looking at them in the context of the post-Government employment rules for a former DOI employee and, accordingly, had considered the issue of what type of matter a monument would constitute. I remember briefly discussing that, while questions such as the President's general authority to declare national monuments or rescind declarations would likely not even constitute a particular matter of general applicability, there is language in the statute that raises the possibility of private rights being impacted in connection with a specific national monument. (See subsections (b) and (c) below regarding reservation and relinquishment.) In a case involving such a reservation or relinquishment, this might impact characterization of the type of matter or matters involved. I don't know if, historically, either of these actions have taken place or if any such actions are being considered.

While I don't recall us discussing this issue during our conversation, I also note that subsection (a) of the statute authorizes declarations involving land "controlled by the Federal Government" in addition to land owned by the Federal Government. If land that is merely controlled by the Government is involved, this may also impact characterization of the type of matter or matters involved. Again, I don't know if this has ever occurred or is being contemplated.

Another issue that we didn't discuss, and I don't know whether this is a realistic concern, is whether there might be private property (a structure for instance), on land owned or controlled by the Government, that might be subject to such a declaration.

I would expect that, pertinent to our analysis would be the guidance contained in the attached OGE advisory 05x1, which recognized that, depending on the breadth of a given issue under consideration, the inclusion of more particularized topics may not result in the overall issue constituting a particular matter. It might also be possible that, for example, a specific reservation or relinquishment might be considered a separate matter from the broader matter of whether to declare or rescind the declaration of a given national monument--depending on the specific circumstances.

I would be happy to discuss the issues further with you if you would like.

16 USC § 320301. National monuments

(a) Presidential declaration. The President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) Reservation of land. The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

(c) Relinquishment to Federal government. When an object is situated on a parcel covered by a bona fide unperfected claim or held in private ownership, the parcel, or so much of the parcel as may be necessary for the proper care and management of the object, may be relinquished to the Federal Government and the Secretary may accept the relinquishment of the parcel on behalf of the Federal Government.

(d) Limitation on extension or establishment of national monuments in Wyoming. No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

Thanks very much,

Ed

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<05x1.pdf>

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Reg Briefing Tomorrow?

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Thu, Aug 24, 2017 at 3:07 PM
To: "Bernhardt, David" <(b) (6) os.doi.gov>
Cc: Melinda J Loftin <Melinda.Loftin@sol.doi.gov>

Hi David,

The "Waste Prevention Rule" does not constitute a party matter and you are not required to recuse from participation in the consideration of its revision.

Per the preamble to 81 Fed Reg 83008 (43 CFR Parts 3100, 3160, and 3170 -- Waste Prevention, Production Subject to Royalties, and Resource Conservation -- Final Rule), the "Waste Prevention Rule" would apply to all Federal and Indian (other than Osage Tribe) onshore oil and gas leases as well as leases and business agreements entered into by tribes (including Indian Mineral Development Act agreements).

In the Analysis of Impacts section of the Final Rule, it states that entities that will be directly affected by the rule include most, if not all, entities involved in the exploration and development of oil and natural gas on Federal and Indian lands -- up to 1828 entities according to March 2015 data. The potentially affected entities are likely to include entities involved in "oil and gas extraction," "drilling oil and gas wells," and "support activities."

According to 2014 data from the U.S. Census Bureau, the approximately 17,00 entities associated with developing, and producing of domestic oil and gas represent an upper bound estimate of the operators that could potentially be affected by the rule.

Moreover, in a quick review of the Final Rule itself, I did not note any provisions regarding specific parties.

If you have any questions or would care to discuss, please let me know.

Thanks,
Ed

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On Thu, Aug 24, 2017 at 11:59 AM, Bernhardt, David <(b) (6) ios.doi.gov> wrote:

> Venting and flaring. Here is what they are asking me to look to give guidance on potential changes to the existing CFR.
>
> --
>
> David Longly Bernhardt
> Deputy Secretary
> U.S. Department of the Interior
> 1849 C Street, NW
> Washington, D.C. 20240
> (202) 208-6291
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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Reg Briefing Tomorrow?

1 message

David Bernhardt <(b) (6) ios.doi.gov> Thu, Aug 24, 2017 at 6:12 PM
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

Thank you for the prompt turn arround.

Sent from my iPhone

On Aug 24, 2017, at 3:08 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> The "Waste Prevention Rule" does not constitute a party matter and you are not required to recuse from participation in the consideration of its revision.
>
> Per the preamble to 81 Fed Reg 83008 (43 CFR Parts 3100, 3160, and 3170 -- Waste Prevention, Production Subject to Royalties, and Resource Conservation -- Final Rule), the "Waste Prevention Rule" would apply to all Federal and Indian (other than Osage Tribe) onshore oil and gas leases as well as leases and business agreements entered into by tribes (including Indian Mineral Development Act agreements).
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> According to 2014 data from the U.S. Census Bureau, the approximately 17,00 entities associated with developing, and producing of domestic oil and gas represent an upper bound estimate of the operators that could potentially be affected by the rule.
>
> Moreover, in a quick review of the Final Rule itself, I did not note any provisions regarding specific parties.
>
> If you have any questions or would care to discuss, please let me know.
>
> Thanks,
> Ed

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On Thu, Aug 24, 2017 at 11:59 AM, Bernhardt, David <(b) (6) os.doi.gov> wrote:

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> David Longly Bernhardt
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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Reg Briefing Tomorrow?

1 message

Bernhardt, David <(b) (6) ios.doi.gov> Thu, Aug 24, 2017 at 6:43 PM
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

I am aware of the litigation, but that is on the flaws of the existing rule. I have NO intention of being engaged in the litigation or any discussions regarding it.

On Thu, Aug 24, 2017 at 3:29 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> You may well be aware but I wanted to make sure that you know that there is litigation regarding the Waste Prevention Rule and the Independent Petroleum Association of America (IPAA) is a party. The Western Energy Alliance (WEA) is also a party.
>
> The following is an excerpt from 82 Fed Reg 27430:
>
> Immediately after the Rule was issued, petitions for judicial review of the Rule were filed by industry groups and States with significant BLMmanaged Federal and Indian minerals. The petitioners in this litigation are the Western Energy Alliance (WEA), the Independent Petroleum Association of America, the State of Wyoming, the State of Montana, the State of North Dakota, and the State of Texas. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. Wyoming v. U.S. Dep't of the Interior, Case No. 2:16–cv–00285–SWS (D. Wyo.). Petitioners assert that the BLM was arbitrary and capricious in promulgating the Rule and that the Rule exceeds the BLM's statutory authority.
>
> As you know, the IPAA is on your recusal list and WEA has been a client of your former firm, though you have not personally provided them services.
>
> Thanks,
>
> Ed
>
> *- Stewardship for America with Integrity and Excellence -*
>
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Ed McDonnell

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---------- Forwarded message ----------
From: **McDonnell, Edward** <edward.mcdonnell@sol.doi.gov>
Date: Thu, Aug 24, 2017 at 3:07 PM
Subject: Re: Reg Briefing Tomorrow?
To: "Bernhardt, David" <(b) (6) os.doi.gov>
Cc: Melinda J Loftin <Melinda.Loftin@sol.doi.gov>

Hi David,

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On Thu, Aug 24, 2017 at 11:59 AM, Bernhardt, David <(b) (6) os.doi.gov> wrote:

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--

David Longly Bernhardt
Deputy Secretary
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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Reg Briefing Tomorrow?

1 message

Edward McDonnell <edward.mcdonnell@sol.doi.gov> Thu, Aug 24, 2017 at 7:56 PM
To: "Bernhardt, David" <(b) (6) os.doi.gov>
Cc: Melinda J Loftin <Melinda.Loftin@sol.doi.gov>

Thank you, David. Perhaps just a few minutes.

Sent from my iPhone

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On Aug 24, 2017, at 6:47 PM, Bernhardt, David <(b) (6) ios.doi.gov> wrote:

Yes.

On Thu, Aug 24, 2017 at 5:23 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

Hi David,

Would it be possible for us to discuss this tomorrow?

Thanks very much,
Ed

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>
> As you know, the IPAA is on your recusal list and WEA has been a client of your former firm, though you have not personally provided them services.
>
> Thanks,
>
> Ed
>
> *- Stewardship for America with Integrity and Excellence -*
>
> --- *Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution.* ---
>
> Ed McDonnell
>
> Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
> U.S. Department of the Interior
>
> *Departmental Ethics Office*
>
> *Office of the Solicitor*

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

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Office: (202) 208-5916
Cell: (b) (6) [redacted]

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Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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---------- Forwarded message ----------
From: **McDonnell, Edward** <edward.mcdonnell@sol.doi.gov>
Date: Thu, Aug 24, 2017 at 3:07 PM
Subject: Re: Reg Briefing Tomorrow?
To: "Bernhardt, David" <(b) (6) [redacted]ios.doi.gov>
Cc: Melinda J Loftin <Melinda.Loftin@sol.doi.gov>

Hi David,

The "Waste Prevention Rule" does not constitute a party matter and you are not required to recuse from participation in the consideration of its revision.

Per the preamble to 81 Fed Reg 83008 (43 CFR Parts 3100, 3160, and 3170 -- Waste Prevention, Production Subject to Royalties, and Resource Conservation -- Final Rule), the "Waste Prevention Rule" would apply to all Federal and Indian (other than Osage Tribe) onshore oil and gas leases as well as leases and business agreements entered into by tribes (including Indian Mineral Development Act agreements).

In the Analysis of Impacts section of the Final Rule, it states that entities that will be directly affected by the rule include most, if not all, entities involved in the exploration and development of oil and natural gas on Federal and Indian lands -- up to 1828 entities according to March 2015 data. The potentially affected entities are likely to include entities involved in "oil and gas extraction," "drilling oil and gas wells," and "support activities."

According to 2014 data from the U.S. Census Bureau, the approximately 17,00 entities associated with developing, and producing of domestic oil and gas represent an upper bound estimate of the operators that could potentially be affected by the rule.

Moreover, in a quick review of the Final Rule itself, I did not note any provisions regarding specific parties.

If you have any questions or would care to discuss, please let me know.

Thanks,

Ed

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On Thu, Aug 24, 2017 at 11:59 AM, Bernhardt, David <(b) (6) [redacted]os.doi.gov> wrote:

> Venting and flaring. Here is what they are asking me to look to give guidance on potential changes to the existing CFR.

--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
(202) 208-6291

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--

David Longly Bernhardt
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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: REQUEST FOR INFO - RE: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Tue, Jul 10, 2018 at 3:53 PM
To: "Christopher B. Kearney" <CKearney@tfgnet.com>
Cc: Joe Raeder <JRaeder@tfgnet.com>

Thanks very much, Chris!

Ed

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On Mon, Jul 9, 2018 at 8:12 AM, Christopher B. Kearney <CKearney@tfgnet.com> wrote:

> Hey Ed,
>
> Thanks for reaching out.
>
> Re the meeting: A broad group of water users from north and south of the delta (all members of the Association of California Water Agencies, whose conference David gave the keynote to in May), are in town this week for a variety of meetings.
>
> They want to provide David with an update on their general perspectives regarding the Reconsultation process currently underway on the USFWS Bay Delta Biological Opinions. They are also interested in obtaining feedback from David on how their input can be most effective in achieving a successful outcome that works for all parties involved.
>
> Links to info on the 2008 Biop as well as a letter from Reclamation and the state requesting reconsultation are below.
>
> https://www.fws.gov/sfbaydelta/Documents/08-02-2016_BOR-DWR_Reinitiation_Letter.pdf
>
> https://www.fws.gov/sfbaydelta/CVP-SWP/index.htm

Thanks and let me know if you have any other questions.

Chris

From: Tina Dykstra
Sent: Friday, July 6, 2018 5:03 PM
To: McDonnell, Edward <edward.mcdonnell@sol.doi.gov>
Cc: Christopher B. Kearney <CKearney@tfgnet.com>; Joe Raeder <JRaeder@tfgnet.com>
Subject: REQUEST FOR INFO - RE: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)

Thank you, Ed. We appreciate your time.

I have forwarded your request for further information to Chris Kearney who can provide more details on subjects.

Thank you, sir.

Best,

Tina

Tina Dykstra

202.261.6013 OFFICE
[redacted] MOBILE

1901 Pennsylvania Ave. NW, Suite 700, Washington, DC 20006

TheFergusonGroup.com

From: McDonnell, Edward [mailto:edward.mcdonnell@sol.doi.gov]
Sent: Friday, July 06, 2018 4:24 PM
To: Tina Dykstra <tdykstra@tfgnet.com>
Subject: Fwd: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)

Hi Tina,

Gareth Rees forwarded your meeting request to our office for ethics review in light of David's recusal requirements. Would it be possible to get a more detailed description of the subjects that you and the water district representatives would like to discuss with David? For example, are there any documents or other information online regarding the biological opinion and reconsultation to which you could refer me?

Thank you very much for your time and consideration.

Ed

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Ed McDonnell

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---------- Forwarded message ----------
From: **Gareth Rees** <gareth_rees@ios.doi.gov>
Date: Tue, Jul 3, 2018 at 12:45 PM
Subject: Fwd: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)
To: Margaret Connors <margaret.connors@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Hi,

David would like to do this if okay with Ethics.

Thanks

---------- Forwarded message ---------
From: **Tina Dykstra** <tdykstra@tfgnet.com>
Date: Wed, Jun 27, 2018 at 10:27 AM
Subject: [EXTERNAL] MEETING REQUEST - Friant Water Authority (CA)
To: Rees, Gareth <gareth_rees@ios.doi.gov>
Cc: Christopher B. Kearney <CKearney@tfgnet.com>

Hi Gareth –

I trust all is well with you! Hope you are enjoying the summer months!

Attached please find the completed form for a meeting with Mr. Bernhardt for the Friant Water Authority.

They will be in WDC on July 10th and 11th and would appreciate the opportunity for a meeting.

Thank you for your time and consideration.

I look forward to your reply.

Best,

Tina

Tina Dykstra
202.261.6013 OFFICE
[redacted] MOBILE
1901 Pennsylvania Ave. NW, Suite 700, Washington, DC 20006
TheFergusonGroup.com

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6) [redacted]

Spam
Phish/Fraud
Not spam
Forget previous vote

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Settlement Agreement

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Thu, Aug 24, 2017 at 11:49 AM
To: "Bernhardt, David" <(b) (6) os.doi.gov>
Cc: Melinda J Loftin <Melinda.Loftin@sol.doi.gov>, "Lacroix, David" <david.lacroix@sol.doi.gov>

Hi David,

You are not required to recuse from participation in evaluating and determining the contents of the final record of decision.

I agree that the record of decision is not a particular matter involving specific parties.

Further, it is my opinion that, while the litigation and related settlement agreement do constitute a particular matter involving specific parties in which USOGA (a former client under the pledge and an entity with which you have a covered relationship under 5 CFR 2635.502) is a party, your participation in determining the contents of the final record of decision does not constitute participation in this particular matter involving specific parties.

Based on the above, you may participate in evaluating and determining the contents of the final record of decision.

Please let me know if you have any questions or would care to discuss further.

Thanks very much,
Ed

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Ed McDonnell

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On Tue, Aug 22, 2017 at 10:59 PM, David Bernhardt <(b) (6) ios.doi.gov> wrote:

> Ed: I am not requesting to do anything with the litigation or the settlement agreement.
>
> What I'm requesting is clearance to evaluate, participate and determine the contents of the final record of decision that would be selected as a logical outgrowth of the various alternatives considered in the final programmatic eis. It is my view that the issuance of the record of decision for the programtic eis is a either a matter, or a particular matter of general applicability, based on the relevant standards.
>
> It is my view that issuance of the record of decision for this programmatic eis is clearly not a particular involving specific parties subject to my recusals. It is matter with broad and diverse interest as reflected from the varied and diverse comments contained in the Appendix.
>
> In contrast, I would not be involved with any decision related to the particular litigation and stipulation, which is obviously a specific party matter involving a former client who is represented in this particular litigation by some other lawyer and law firm.
>
> I hope this helps with your evaluation.
>
> Sent from my iPhone
>
> On Aug 22, 2017, at 8:05 PM, Edward McDonnell <edward.mcdonnell@sol.doi.gov> wrote:
>
> > Hi David,
> >
> > Is your question whether you can participate in implementation of Section IX of the agreement?
> >
> > Thanks,
> > Ed
> >
> > Sent from my iPhone
> >
> > *- Stewardship for America with Integrity and Excellence -*
> >
> > *--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---*

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Tour of Dry Tortugas National Park

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Wed, Mar 28, 2018 at 7:03 AM
To: "Spector, Rachel" <rachel.spector@sol.doi.gov>
Cc: "Rees, Gareth" <gareth_rees@ios.doi.gov>, "Heindl, Jennifer" <jennifer.heindl@sol.doi.gov>, "Nigborowicz, Timothy" <timothy_nigborowicz@ios.doi.gov>

Hi Rachel,

I believe that, when the Secretary, his wife, and his wife's aunt traveled to the Channel Islands in an NPS boat, (b) (5) [redacted] I'm not aware of the NPS having to use a bigger boat to carry them. I'm cc'ing Tim Nigborowicz as he may have more accurate information as to what happened and why.

Thanks,
Ed

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On Tue, Mar 27, 2018 at 5:19 PM, Spector, Rachel <rachel.spector@sol.doi.gov> wrote:

> Hi Gareth:
>
> Jennifer and I discussed the matter with Dan and do not see any general law issues with the plan as long as David pays fair market value for any additional costs incidental to his family accompanying him (such as using a bigger boat to travel to the key). We also think David and NPS should be mindful not to share confidential information in the presence of David's family or we will lose our ability to assert the privilege.
>
> Please let us know if you want to discuss it further. I've also cc'ed the Ethics Office in case they have any concerns.
>
> Thanks,
>
> Rachel
>
> Rachel Spector
> Division of General Law
> Office of the Solicitor
> U.S. Department of the Interior
> (202) 208-6029
>
> On Tue, Mar 27, 2018 at 10:15 AM, Rees, Gareth <gareth_rees@ios.doi.gov> wrote:
>
> > Hi Rachel
> >
> > Could you have a quick look at the email below and let me know if there are any issues? Happy to discuss.
> >
> > Thanks
> >
> > Gareth
> >
> > ---------- Forwarded message ----------
> > From: **Rees, Gareth** <gareth_rees@ios.doi.gov>
> > Date: Mon, Mar 26, 2018 at 1:25 PM
> > Subject: Tour of Dry Tortugas National Park
> > To: Jennifer Heindl <jennifer.heindl@sol.doi.gov>, Edward McDonnell <edward.mcdonnell@sol.doi.gov>
> >
> >
> > Good Afternoon,
> >
> > Deputy secretary Bernhardt is currently (b) (6) [redacted] He will be conducting a few official meetings with NPS employees whilst he is there. On Thursday March 29th, he will head to Dry Tortugas National Park where NPS has offered to give him a tour of the park where they will be discussing the maintenance backlog and the impact of the hurricane season. A breakdown of the tour is listed below. Please note that Mr. Bernhardt be covering the cost of himself and children for transportation, meals and any equipment that may need to be rented. He asked that I run this through SOL/Ethics to make sure there are no problems. If you need any further information, please let me know. Thanks
> >
> >
> > Thursday March 29
> > 0715-0800 Arrive at Key West Ferry Terminal, Check-In, Boarding 0730
> >
> > 0800-1030 Commercial ferry *Yankee Freedom III* from Key West to Park, breakfast provided
> >
> > 1030-1100 Greetings with Glenn Simpson, Park Manager (cell) (b) (6) [redacted] at Main Dock, take lunches to go from ferry

1100-1315 Small boat trip with Glenn Simpson to Loggerhead Key, walking tour of island guided snorkel tour of Little Africa coral reef area

1315-1415 Walking tour of Fort Jefferson and park operations, discuss deferred maintenance and key park issues

1415-1430 Close-out discussions at park main dock, board ferry

1445-1730 Ferry from Park back to Key West

1730 End of day's activities

--

Gareth C. Rees

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Yosemite Conference

1 message

Bernhardt, David <(b) (6) ios.doi.gov> Wed, Oct 11, 2017 at 9:29 AM
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

Roger that.

On Wed, Oct 11, 2017 at 9:26 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> Ryan Waterman of BHFS is a Co-Chair of the Conference Planning Committee. He is listed as such on page 2 of the attached conference brochure. He is also listed on page 3, as Co-Chair and as from BHFS, as providing your introduction for the keynote presentation.
>
> As you know, BHFS is listed as a sponsor of the event. This likely means that they have at least provided financial support.
>
> OGE has indicated that, while simply providing financial support to an event does not make an organization a sponsor of the event for ethics purposes, if an organization is involved in the organization, planning, and conduct of an event, the organization is considered a sponsor of the event. BHFS has, at the very least, been involved in the planning of the event--in fact, one of their employees is actually a Co-Chair of the Planning Committee.
>
> OGE has advised that, under the impartiality regulation (as referenced in your ethics agreement) and the pledge, an appointee should not speak at an event sponsored by a former client if the event affects the former client's financial interests. An event affects a former client's financial interests if there is an admission fee, it is a fundraiser, or if it is for business development. While there is an admission fee in this case, it is charged by the CA State Bar and likely no portion of the fee would go to BHFS. It is not a fundraiser. As we discussed, however, this could certainly be considered a business development event for BHFS, especially given the prominence of one of its employees being Co-Chair of the Planning Committee. BHFS is also listed on page 8 of the brochure as a co-sponsor of a reception on Saturday night.
>
> Additionally, the fact that Mr. Waterman is listed in the conference brochure as introducing you as the Deputy Secretary, along with the early mention in your biography of your being a former shareholder at BHFS, creates a strong appearance of a connection between BHFS and you in your current position. While the Bar could have someone else introduce you at the event, the published brochure connection will remain.
>
> I think that, given these facts, the impartiality regulation (as implemented in your ethics agreement) and the ethics pledge prohibit you from providing the keynote presentation at this event.
>
> Please let me know if you have any questions or would care to discuss.
>
> Thanks very much,
> Ed

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Ed McDonnell

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--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
(202) 208-6291

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McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Request for Meeting with David Bernhardt

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Fri, Jul 6, 2018 at 3:42 PM
To: william@naturalresourceresults.com
Cc: "Rees, Gareth" <gareth_rees@ios.doi.gov>

Hi Mr. Kelleher,

Gareth Rees forwarded your meeting request to our office for ethics review in light of David's recusal requirements. Would it be possible to get a more detailed description of the subjects that Mr. Sutton and Mr. Butler would like to discuss with David?

For instance, are there any specific aspects of the CVP operations upon which they'd like to focus?

And which biological opinions would they like to discuss? Are there any documents or other information online that I could review?

Thank you very much for your time and consideration.

Best,
Ed McDonnell

***

Hi Gareth,

On behalf of Jeff Sutton, General Manager of the Tehama-Colusa Canal Authority (TCCA), I am writing to request a quick fifteen minute meeting with the Deputy Secretary of the Interior, David Bernhardt, to discuss Central Valley Project (CVP) operations and FWS/NMFS re-consultation on CVP TCCA biological opinions. **Jeff has availability anytime on Tuesday, July 10th; Wednesday, July 11th; as well as on the morning of Thursday, July 12th.**

Joining Jeff will be Mitch Butler of Natural Resource Results. Additionally, Jeff is also available for a cup of coffee before or after business hours at location amendable to Mr. Bernhardt if he is available on any of the dates mentioned above.

I have also attached the meeting request information form to this email. Thank you in advance for your consideration of this request, I look forward to hearing back from you.

Best,

William K Kelleher
Natural Resource Results

601 13th St., NW (Suite 580)
Washington, D.C. 20005
Cell: 504-228-3212
www.naturalresourceresults.com

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Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: [redacted] (6) (a)

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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Label: "SOL FOIA 2018 - 00129"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:08 AM

Conversation Contents

278e

Attachments:

/18. 278e/3.1 Bernhardt, David - Markup of 278e.pdf

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Wed May 30 2018 13:43:38 GMT-0600 (MDT)
To:	"Bernhardt, David" (b) (6) t@ios.doi.gov>
Subject:	278e

Hi David,

I've made all the changes we discussed.

(b) (5)

[redacted]

(b) (5) [redacted]

Thanks for your work on this. I look forward to us certifying your report tomorrow and passing it forward to OGE for final certification.

Thanks,
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David Bernhardt <(b) (6) [redacted]@ios.doi.gov>

From:	David Bernhardt (b) (6) @ios.doi.gov>
Sent:	Mon Jun 04 2018 12:57:30 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject:	Re: 278e

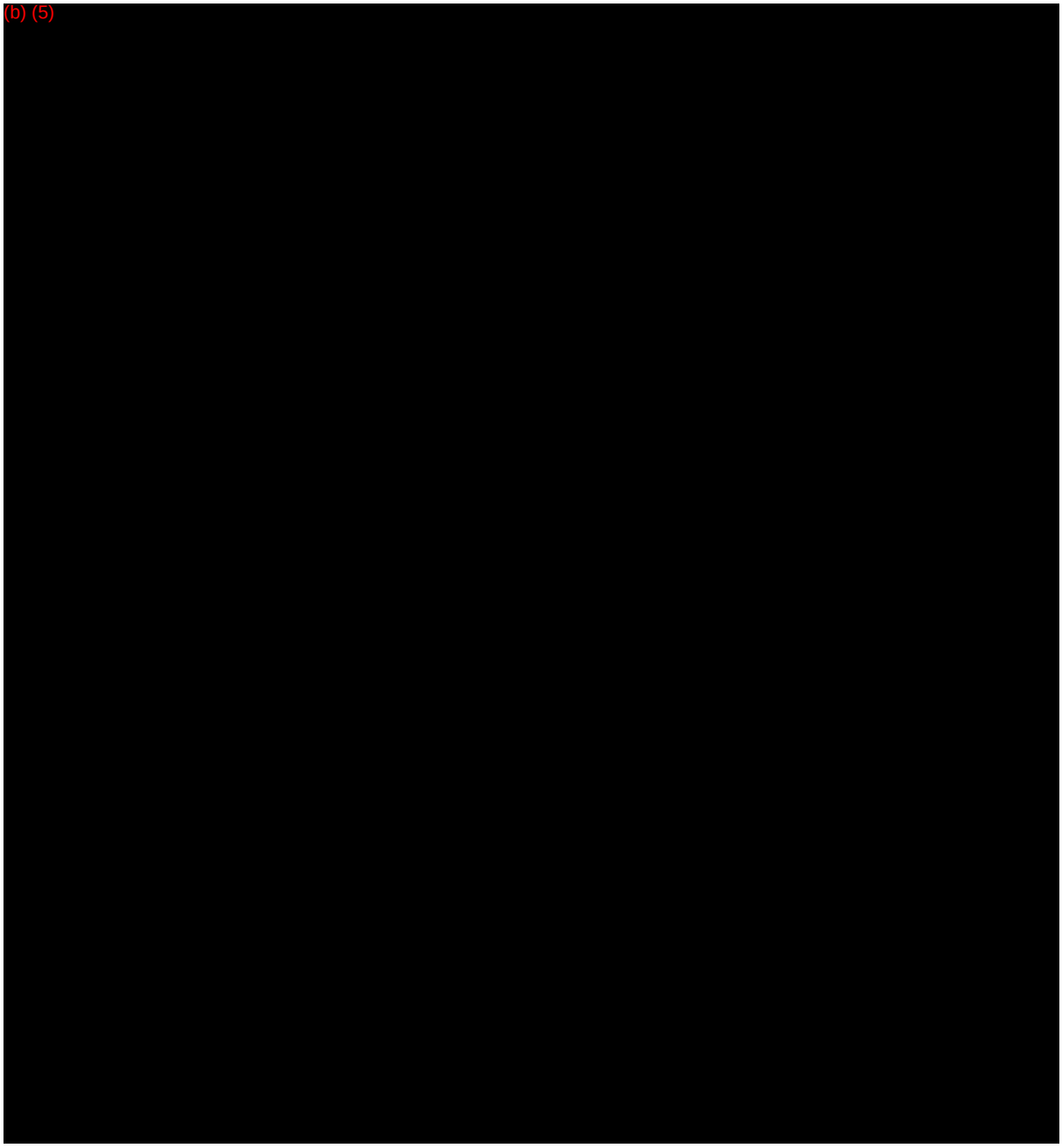
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Sent from my iPhone

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Jun 04 2018 15:28:37 GMT-0600 (MDT)
To:	David Bernhard (b) (6) @ios.doi.gov>
Subject:	Re: 278e
Attachments:	Bernhardt, David - Markup of 278e.pdf

Thanks very much, David!

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David Bernhard (b) (6) @ios.doi.gov>

From: David Bernhard (b) (6) @ios.doi.gov>
Sent: Mon Jun 04 2018 15:37:33 GMT-0600 (MDT)
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject: Re: 278e

I'm no longer participating

Sent from my iPhone

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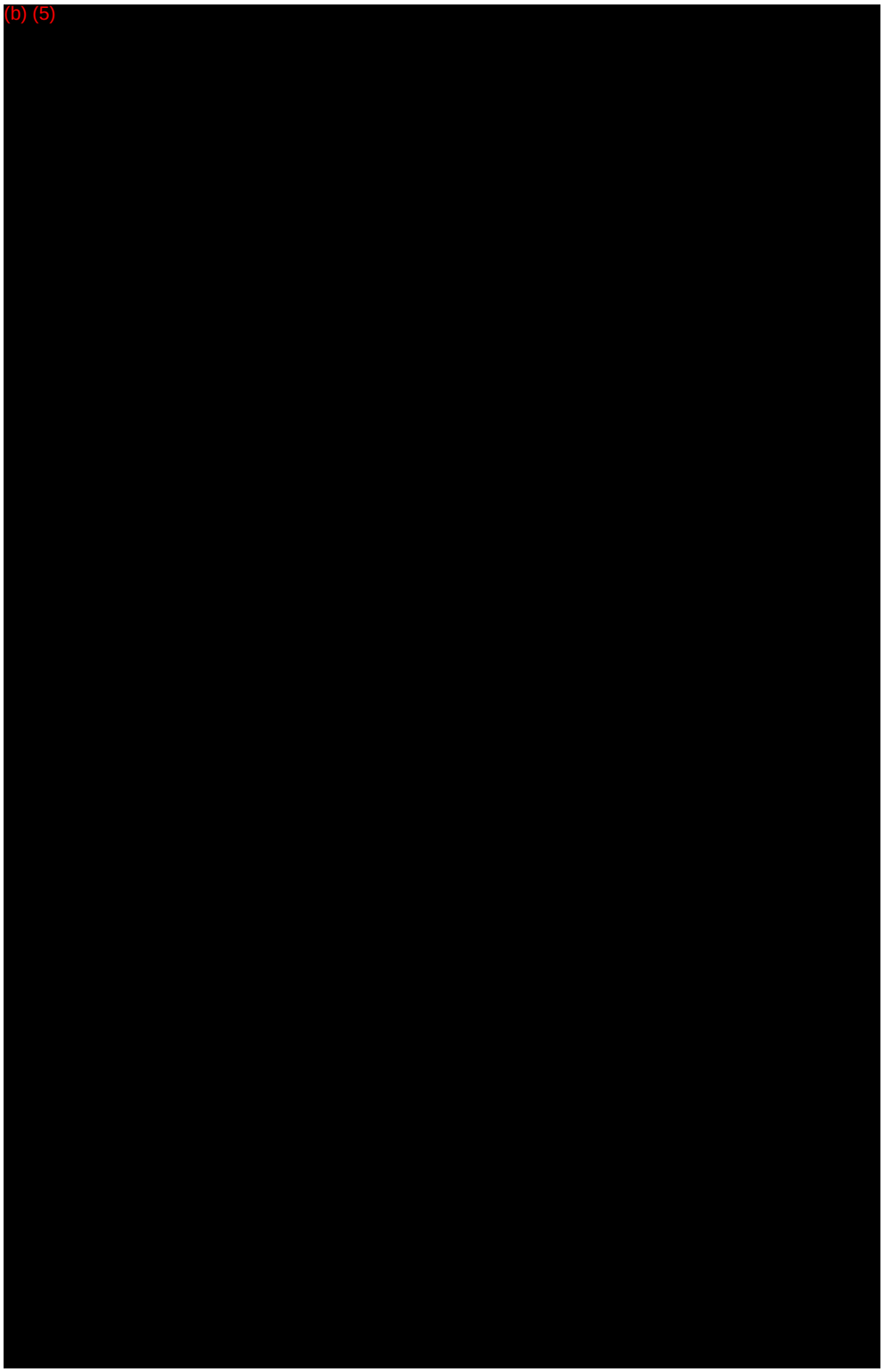
On Mon, Jun 4, 2018 at 2:57 PM, David Bernhard (b) (6) [redacted]@ios.doi.gov> wrote:

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<Bernhardt, David - Markup of 278e.pdf>

Edward McDonnell <edward.mcdonnell@sol.doi.gov>

From: Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Sent:	Mon Jun 04 2018 15:43:43 GMT-0600 (MDT)
To:	David Bernhardt (b) (6) @ios.doi.gov>
Subject:	Re: 278e

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Sent from my iPhone

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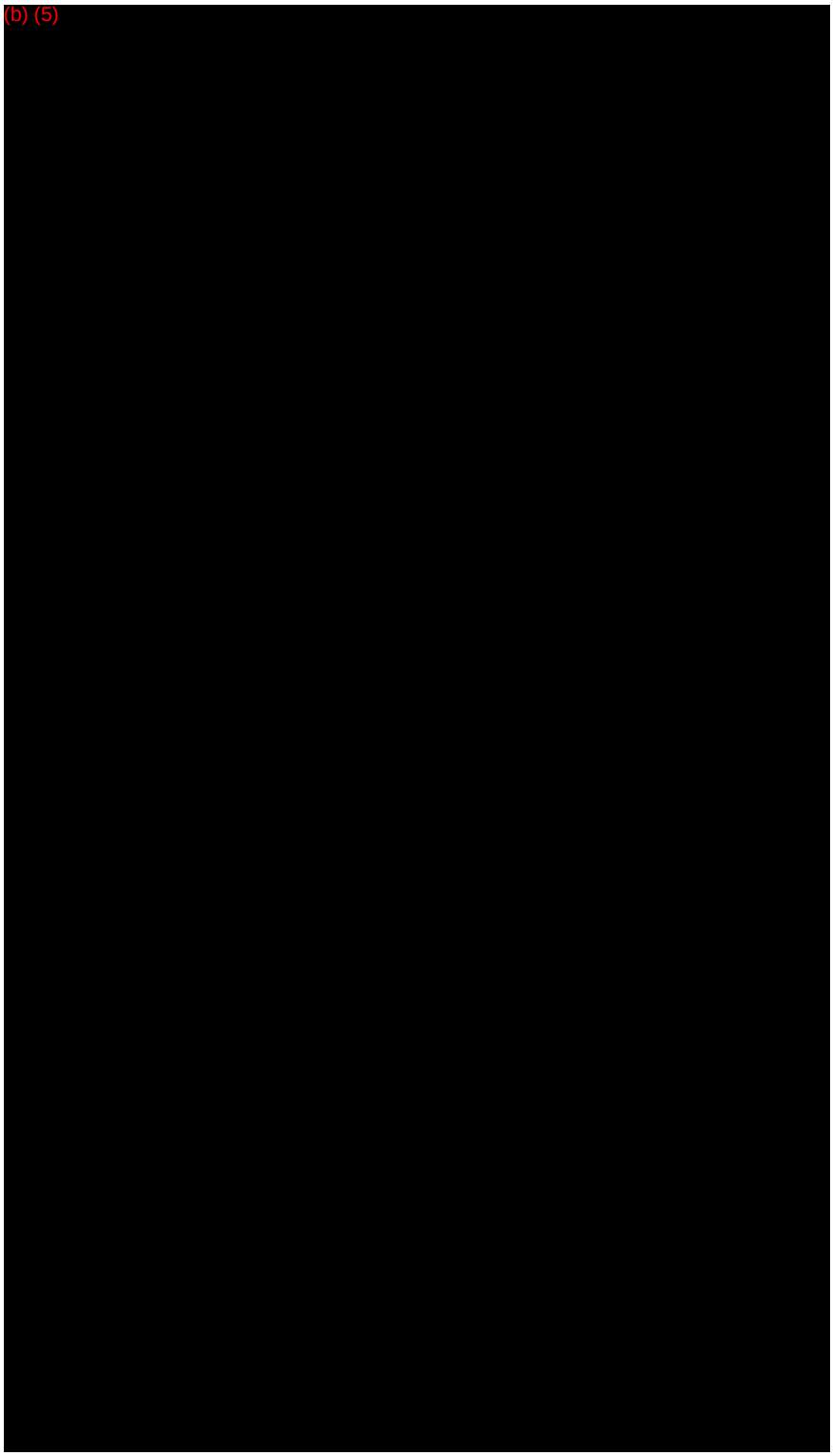
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<Bernhardt, David - Markup of 278e.pdf>

U.S. Department of the Interior – Office of the Deputy Secretary

Meeting Proposal Information Form

***Please complete this form and send to gareth_rees@ios.doi.gov**

To ensure that the appropriate individual within the Department of the Interior is meeting with you on a given matter and because the Office of the Deputy Secretary is committed to maintaining the highest ethical standards, we request that you answer the following questions before we will agree to schedule a meeting.[1] Therefore, please provide your request in writing and answer the following questions either on this sheet or a separate one.

Describe the action you are seeking by the Office of the Deputy Secretary:

Provide a general update on the SunZia Southwest Transmission Project ("SunZia") in New Mexico and Arizona.

Meeting date:

To be scheduled during the week of October 23-27, 2017.

Meeting location:

Interior Department HQ in Washington, DC

Contact information (Name, Email, Phone):

Tom Champion; tom@tomchampion.biz ; (301) 602-1621(m)

With which Bureau or Agency does your agenda most align? (Please list all, if more than one.)

Bureau of Land Management

Please indicate whether the matter related to the request involves:

- ☒ a) Specific parties, such as a particular litigation matter, a specific permit decision, or a contract;
- ☐ b) A discrete and identifiable class of persons, such as a regulation or legislation that applies to a specific industry; or
- ☐ c) A broad and diverse range of persons, such as a resource management plan or broad legislation?

If you answered "a)" above:

- **Please identify the specific parties if possible:** *SunZia Transmission LLC*

(b) (5) [redacted]

- **If the specific parties are identified, are you aware that any party is represented by Brownstein Hyatt Farber Schreck, LLP in this particular matter?**

☒ Yes ☐ No

[1] In order to avoid even the potential appearance of a lack of impartiality, the Deputy Secretary agreed that, for one year after his withdrawal from his former firm, he would not participate personally and substantially in any particular matter involving specific parties in which he knows his former firm is or represents a party, unless authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). He also agreed not to participate personally and substantially in any particular matter involving specific parties in which he knows a former client of his is or represents a party for a period of one year after he last provided service to that client, unless he is first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, per the Administration Ethics Pledge, the Deputy Secretary agreed that he will not for a period of two years from the date of his appointment participate in any particular matter involving specific parties in which a former employer or client of his is or represents a party, if he served that former employer or client during the two years prior to his appointment, absent a waiver under Section 3 of Executive Order No. 13770. This includes recusal from any meeting or other communication with such a former employer or client unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

(b) (5)

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SunZia Transmission LLC was represented by David Bernhardt at Brownstein Hyatt to act as government relations advisors commencing in May of 2010 and terminating in May of 2012

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Please explain the time sensitivity of the request, if any, including what is driving the timing of the requ
such as court-ordered or statutory deadline:

Related to receiving a timely Notice to Proceed in 2018 to initiate construction activity on the SunZia Proje

If the requested action involves the interpretation or application of a particular policy, regulation, or statute, please provide the underlying text along with any briefing material sufficiently in advance of a meeting so that it can be reviewed before the meeting.

Nothing specific other than a general discussion of NEPA requirements. Briefing materials attached.

Expected meeting participants (name, title, and organization):

Jonathan Bruser, Manager, Project Development, MMR Group
Tom Champion, Manager, Governmental Affairs, SunZia Project
Tom Wray, Project Manager, SunZia Project

If the Deputy Secretary is unable to meet, is a surrogate desired? If yes, who specifically?

Assistant Secretary, Land & Minerals

Acting Director, Bureau of Land Management

Rees, Gareth <gareth_rees@ios.doi.gov>

Appt request with Mr. Bernhardt

3 messages

Nancy Peele <nancy@garretgraves.com> Wed, Oct 18, 2017 at 10:09 AM
To: catherine_gulac@ios.doi.gov
Cc: gareth_rees@ios.doi.gov

Cathy- thank you for taking the time to speak on the phone this morning. As I mentioned, Congressman Garret Graves (R-LA) has a constituent coming to DC next week who would like a meeting with Mr. Bernhardt. Congressman Graves asked that I reach out to request the appt for Mr. Bruser. Please see the below details. Thanks— Nancy

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(b) (6) [redacted]

Attendees:

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Tom Wray, Southwestern Power

Tom Champion

Dates for Appt:

Monday, October, 23

Thursday, October 26

TOPIC:

Effectively we have a large electric high voltage infrastructure and generation project (the multi-billion dollar SunZia Transmission Project) under development for many years that is heading to a financing early next year. We received our federal permits back in early 2015 and recently received our final FERC approval. We are looking at working with WAPA on the project as well. It appears that we can move power across some of WAPA's existing system to deliver energy to our proposed customers and those incremental rents will help buy down the cost of service to WAPA's preference customers.

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[Quoted text hidden]

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Thanks

Gareth
[Quoted text hidden]
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Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: (b) (6) [redacted]

Meeting Proposal Information Form Deputy Secretary.docx
31K

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SunZia Southwest Transmission Project

Status Report | September 2017

SunZia is a 515-mile transmission line consisting of two 500 kV transmission facilities that can transmit up to 3,000 MW of energy. New Mexico and Arizona are rich in renewable energy resources. The SunZia Project will provide one of the few means to develop these renewables and deliver them to major power markets and utility customers across the Western power grid. It also provides employment and tax revenues for both states and local counties.

$70 Million Spent To-Date

Estimated $850 Million to Construct First Line

2006-2017: Over Ten Years of Project Development:

- Joint Participation Agreement Executed
- Environmental Studies Completed (7 year process)
- Federal Permitting Completed and BLM Right-of-Way Acquired
- Arizona State Siting Permit Issued
- Numerous Electrical Studies Completed with WECC
- Selected Pattern Energy as Anchor Customer for 1500 MW of capacity based on wind energy projects it will develop in New Mexico

2017: Year of Transition to Construction:

- Acquire ROW on State & Private Lands
- Continue Marketing Efforts with Pattern Energy for Line 1
- Obtain Location Permit in New Mexico
- Complete Engineering design of Line 1
- Negotiate Construction Contracts and Purchase Orders on Major Equipment: Cable, Towers, Concrete, Substation Equipment, etc.
- Arrange Construction Financing

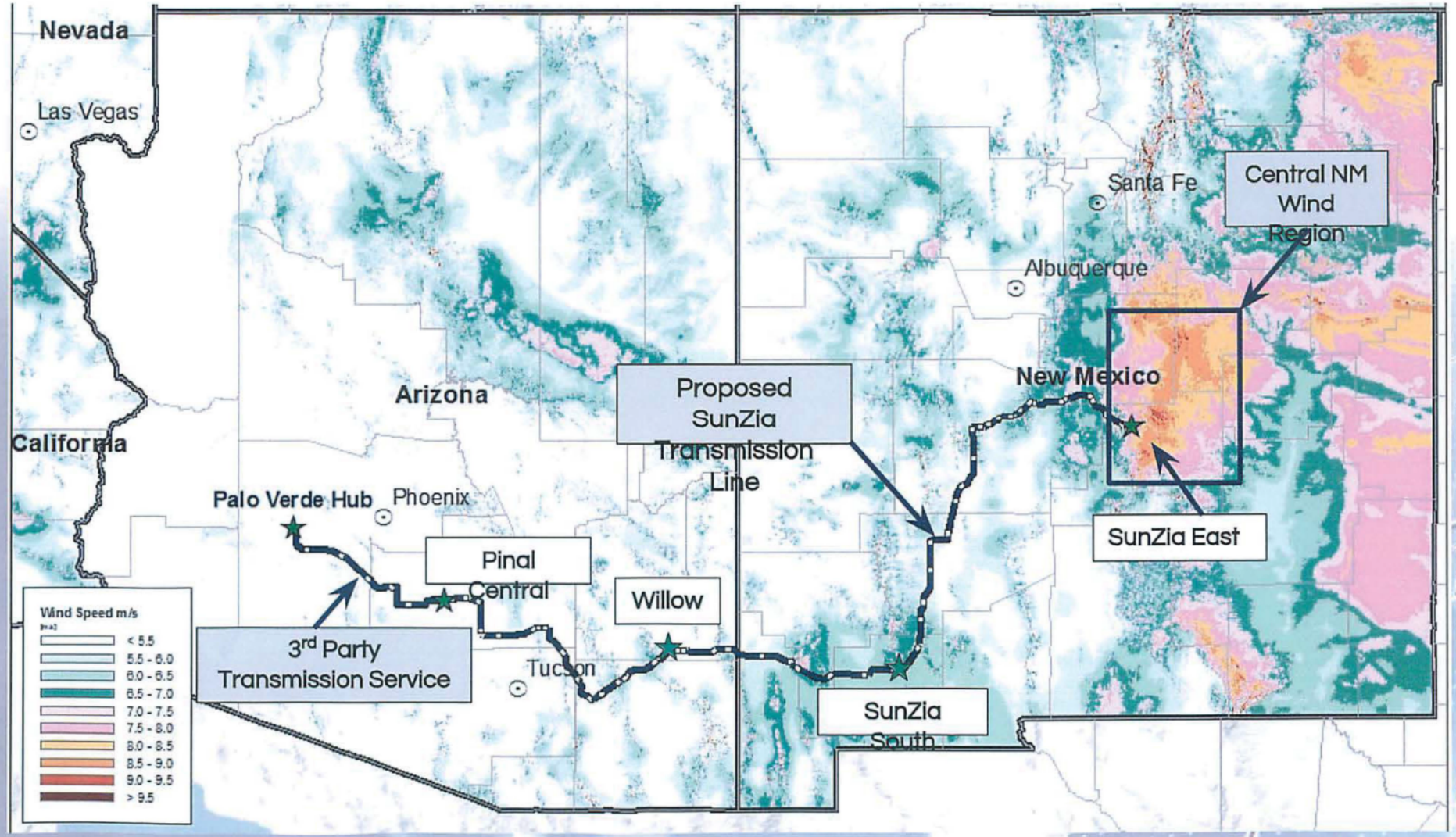
2018: Start of Construction of First 500 kV line in Q2:

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2020: Commercial Operation by Q4 2020:

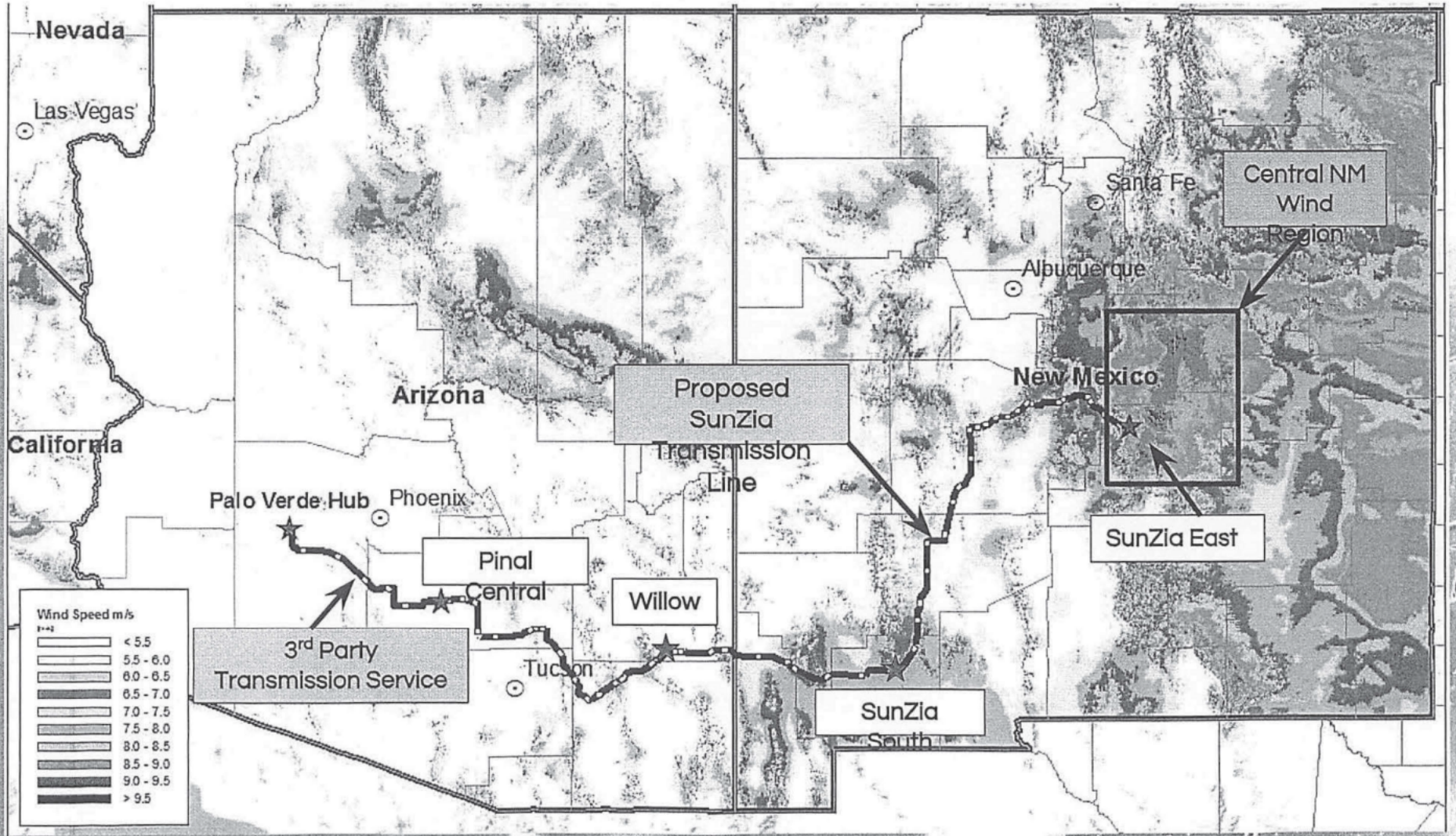
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BISON CONNECT

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If the Deputy Secretary is unable to meet, is a surrogate desired? If yes, who specifically?

Assistant Secretary, Land & Minerals

Acting Director, Bureau of Land Management

On 10/25/17 David Bernhardt declined this Meeting. Jim Cason will attend in his place.

U.S. Department of the Interior – Office of the Deputy Secretary

Meeting Proposal Information Form

*Please complete this form and send to gareth_rees@ios.doi.gov

To ensure that the appropriate individual within the Department of the Interior is meeting with you on a given matter and because the Office of the Deputy Secretary is committed to maintaining the highest ethical standards, we request that you answer the following questions before we will agree to schedule a meeting.[1] Therefore, please provide your request in writing and answer the following questions either on this sheet or a separate one.

Describe the action you are seeking by the Office of the Deputy Secretary:

Provide a general update on the SunZia Southwest Transmission Project ("SunZia") in New Mexico and Arizona.

Meeting date:

To be scheduled during the week of October 23-27, 2017.

Meeting location:

Interior Department HQ in Washington, DC

Contact information (Name, Email, Phone):

Tom Champion; tom@tomchampion.biz ; (301) 602-1621(m)

With which Bureau or Agency does your agenda most align? (Please list all, if more than one.)

Bureau of Land Management

Please indicate whether the matter related to the request involves:

- ☒ a) Specific parties, such as a particular litigation matter, a specific permit decision, or a contract;
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If you answered "a)" above:

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[1] In order to avoid even the potential appearance of a lack of impartiality, the Deputy Secretary agreed that, for one year after his withdrawal from his former firm, he would not participate personally and substantially in any particular matter involving specific parties in which he knows his former firm is or represents a party, unless authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). He also agreed not to participate personally and substantially in any particular matter involving specific parties in which he knows a former client of his is or represents a party for a period of one year after he last provided service to that client, unless he is first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, per the Administration Ethics Pledge, the Deputy Secretary agreed that he will not for a period of two years from the date of his appointment participate in any particular matter involving specific parties in which a former employer or client of his is or represents a party, if he served that former employer or client during the two years prior to his appointment, absent a waiver under Section 3 of Executive Order No. 13770. This includes recusal from any meeting or other communication with such a former employer or client unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

David mtg

Fi

/47

(b) (5)



2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 25, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. Add § 52.2219 to read as follows:

§ 52.2219 Conditional approval.

Tennessee submitted a letter to EPA on December 7, 2016, with a commitment to address the State Implementation Plan deficiencies regarding requirements of Clean Air Act section 110(a)(2)(D)(i)(II) related to interference with measures to protect visibility in another state (prong 4) for the 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS. EPA conditionally approved the prong 4 portions of Tennessee's March 13, 2014, 2010 1-hour NO_2 and 2010 1-hour SO_2 infrastructure SIP submission and December 16, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission in an action published in the **Federal Register** on June 15, 2017. If Tennessee fails to meet its commitment by June 15, 2018, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

[FR Doc. 2017–12342 Filed 6–14–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[17X.LLWO310000.L13100000.PP0000]

RIN 1004–AE14

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Postponement of Certain Compliance Dates

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification; postponement of compliance dates.

SUMMARY: On November 18, 2016, the Bureau of Land Management (BLM) issued a final rule entitled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation" (the "Waste Prevention Rule" or "Rule"). Immediately after the Waste Prevention Rule was issued, petitions for judicial review of the Rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. In light of the existence and potential consequences of the pending litigation, the BLM has concluded that justice requires it to postpone the compliance dates for certain sections of the Rule pursuant to the Administrative Procedure Act, pending judicial review.

DATES: June 15, 2017.

FOR FURTHER INFORMATION CONTACT: Timothy Spisak at the BLM Washington Office, 20 M Street SE., Room 2134 LM, Washington, DC 20003, or by telephone at 202–912–7311. For questions relating to regulatory process issues, contact Faith Bremner at 202–912–7441.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact these individuals during normal business hours. FRS is available 24 hours a day, 7 days a week to leave a message or question with these individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 2016, the BLM published the Waste Prevention Rule. (81 FR 83008) The Rule addresses, among other things, the loss of natural gas through venting, flaring, and leaks during the production of Federal and Indian oil and gas. The Rule replaced Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (1980) ("NTL–4A"), which governed the venting and flaring of Federal and Indian gas for more than three decades. In addition to updating and revising the requirements of NTL–4A, the Rule contained new requirements that operators capture a certain percentage of the gas they produce (43 CFR 3179.7), measure flared volumes (43 CFR 3179.9), upgrade or replace pneumatic equipment (43 CFR 3179.201–179.202), capture or combust storage tank vapors (43 CFR 3179.203), and implement leak detection and repair (LDAR) programs (43 CFR 3179.301–.305). The Rule did not obligate operators to comply with these new requirements until January 17, 2018. Compliance with certain other provisions of the Rule is already mandatory, including the requirement that operators submit a "waste minimization plan" with applications for permits to drill (43 CFR 3162.3–1), new regulations for the royalty-free use of production (43 CFR subpart 3178), new regulatory definitions of "unavoidably lost" and "avoidably lost" oil and gas (43 CFR 3179.4), limits on venting and flaring during drilling and production operations (43 CFR 3179.101–179.105), and requirements for downhole well maintenance and liquids unloading (43 CFR 3179.204).

Immediately after the Rule was issued, petitions for judicial review of the Rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. The petitioners in this litigation are the Western Energy Alliance (WEA), the Independent Petroleum Association of

America, the State of Wyoming, the State of Montana, the State of North Dakota, and the State of Texas. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. *Wyoming v. U.S. Dep't of the Interior*, Case No. 2:16–cv–00285–SWS (D. Wyo.). Petitioners assert that the BLM was arbitrary and capricious in promulgating the Rule and that the Rule exceeds the BLM's statutory authority.

On March 28, 2017, the President issued Executive Order No. 13783 (E.O. 13783) entitled, "Promoting Energy Independence and Economic Growth." E.O. 13783 directed the Secretary of the Interior (Secretary) to review the Rule for consistency with the policies set forth in Section 1 of E.O. 13783 and, if appropriate, publish for notice and comment a proposed rule suspending, revising, or rescinding the Rule. E.O. 13783 Sec. 7(b). On March 29, 2017, the Secretary issued Secretarial Order 3349 implementing E.O. 13783. The Department's review of the Rule is ongoing.

The Secretary has received written requests from WEA and the American Petroleum Institute (API) that the BLM suspend the Rule or postpone its compliance dates in light of the regulatory uncertainty created by the pending litigation and the ongoing administrative review of the Rule. Letter from Kathleen M. Sgamma to Secretary Zinke (April 4, 2017); letter from Jack N. Gerard to Secretary Zinke (May 16, 2017). Both API and WEA stated that operators face the prospect of significant expenditures to comply with provisions of the Rule that will become operative in January 2018. WEA specifically noted that the LDAR, storage tank, and pneumatic device provisions will require operators to begin purchasing and installing tens of thousands of replacement parts in the near future.

Section 705 of the Administrative Procedure Act (APA), 5 U.S.C. 705, provides that, "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." The Rule obligates operators to comply with its "capture percentage," flaring measurement, pneumatic equipment, storage tank, and LDAR provisions beginning on January 17, 2018. This compliance date has not yet passed and is within the meaning of the term "effective date" as that term is used in Section 705 of the APA. Considering the substantial cost that complying with these requirements poses to operators (see U.S. Bureau of Land Management, Regulatory Impact Analysis for: Revisions to 43 CFR subpart 3100 (Onshore Oil and Gas Leasing) and 43 CFR subpart 3600 (sic) (Onshore Oil and Gas Operations), Additions of 43 CFR subpart 3178 (Royalty-Free Use of Lease Production) and 43 CFR subpart 3179 (Waste Prevention and Resource Conservation) (November 10, 2016)), and the uncertain future these requirements face in light of the pending litigation and administrative review of the Rule, the BLM finds that justice requires it to postpone the future compliance dates for the following sections of the Rule: 43 CFR 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, and 3179.301–3179.305.

While the BLM believes the Waste Prevention Rule was properly promulgated, the petitioners have raised serious questions concerning the validity of certain provisions of the Rule. Given this legal uncertainty, operators should not be required to expend substantial time and resources to comply with regulatory requirements that may prove short-lived as a result of pending litigation or the administrative review that is already under way. Postponing these compliance dates will help preserve the regulatory status quo while the litigation is pending and the Department reviews and reconsiders the Rule.

The provisions with compliance dates that have passed and are therefore unaffected by this document include: the requirement that operators submit a "waste minimization plan" with applications for permits to drill (43 CFR 3162.3–1), new regulations for the royalty-free use of production (43 CFR subpart 3178), new regulatory definitions of "unavoidably lost" and "avoidably lost" oil and gas (43 CFR 3179.4), limits on venting and flaring during drilling and production operations (43 CFR 3179.101–179.105), and requirements for downhole well maintenance and liquids unloading (43 CFR 3179.204).

Separately, the BLM intends to conduct notice-and-comment rulemaking to suspend or extend the compliance dates of those sections affected by the Rule.

II. Postponement of Compliance Dates

Pursuant to Section 705 of the APA, the BLM hereby postpones the future compliance dates for the following sections affected by the final rule entitled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation", pending judicial review: 43 CFR 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, and 3179.301–3179.305. BLM will publish a document announcing the outcome of that review.

Dated: June 9, 2017.

Katharine S. MacGregor

Delegated the Authority of the Assistant Secretary for Land and Minerals Management.

[FR Doc. 2017–12325 Filed 6–14–17; 8:45 am]

BILLING CODE 4310–84–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135–AA33

Implementing the Federal Civil Penalties Adjustment Act Improvements Act of 2015

AGENCY: National Endowment for the Arts, National Foundation for the Arts and Humanities.

ACTION: Interim final rule; request for comments.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties that may be imposed for violations of the Program Fraud and Civil Remedies Act (PFCRA) and the NEA's Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

DATES:

Effective date: This rule is effective June 15, 2017.

Comments date: Submit comments on or before July 17, 2017.

ADDRESSES: You may submit comments, identified by RIN 3135–AA33, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: generalcounsel@arts.gov.* Include RIN 3135–AA33 in the subject line of the message.
- *Mail:* National Endowment for the Arts, Office of the General Counsel, 400 7th Street SW., Second Floor, Washington, DC 20506.
- *Hand Delivery/Courier:* National Endowment for the Arts, Office of the General Counsel, 400 7th Street SW., Second Floor, Washington, DC 20506.

Instructions: All submissions received must include the agency name and docket number or Regulatory

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: Reg Briefing Tomorrow?

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Thu, Aug 24, 2017 at 3:07 PM
To: "Bernhardt, David" <(b) (6) os.doi.gov>
Cc: Melinda J Loftin <Melinda.Loftin@sol.doi.gov>

Hi David,

The "Waste Prevention Rule" does not constitute a party matter and you are not required to recuse from participation in the consideration of its revision.

Per the preamble to 81 Fed Reg 83008 (43 CFR Parts 3100, 3160, and 3170 -- Waste Prevention, Production Subject to Royalties, and Resource Conservation -- Final Rule), the "Waste Prevention Rule" would apply to all Federal and Indian (other than Osage Tribe) onshore oil and gas leases as well as leases and business agreements entered into by tribes (including Indian Mineral Development Act agreements).

In the Analysis of Impacts section of the Final Rule, it states that entities that will be directly affected by the rule include most, if not all, entities involved in the exploration and development of oil and natural gas on Federal and Indian lands -- up to 1828 entities according to March 2015 data. The potentially affected entities are likely to include entities involved in "oil and gas extraction," "drilling oil and gas wells," and "support activities."

According to 2014 data from the U.S. Census Bureau, the approximately 17,00 entities associated with developing, and producing of domestic oil and gas represent an upper bound estimate of the operators that could potentially be affected by the rule.

Moreover, in a quick review of the Final Rule itself, I did not note any provisions regarding specific parties.

If you have any questions or would care to discuss, please let me know.

Thanks,
Ed

- Stewardship for America with Integrity and Excellence -

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

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Departmental Ethics Office
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1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Thu, Aug 24, 2017 at 11:59 AM, Bernhardt, David <(b) (6) os.doi.gov> wrote:

> Venting and flaring. Here is what they are asking me to look to give guidance on potential changes to the existing CFR.
>
> --
>
> David Longly Bernhardt
> Deputy Secretary
> U.S. Department of the Interior
> 1849 C Street, NW
> Washington, D.C. 20240
> (202) 208-6291
>
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2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 25, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. Add § 52.2219 to read as follows:

§ 52.2219 Conditional approval.

Tennessee submitted a letter to EPA on December 7, 2016, with a commitment to address the State Implementation Plan deficiencies regarding requirements of Clean Air Act section 110(a)(2)(D)(i)(II) related to interference with measures to protect visibility in another state (prong 4) for the 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS. EPA conditionally approved the prong 4 portions of Tennessee's March 13, 2014, 2010 1-hour NO_2 and 2010 1-hour SO_2 infrastructure SIP submission and December 16, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission in an action published in the **Federal Register** on June 15, 2017. If Tennessee fails to meet its commitment by June 15, 2018, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

[FR Doc. 2017–12342 Filed 6–14–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[17X.LLWO310000.L13100000.PP0000]

RIN 1004–AE14

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Postponement of Certain Compliance Dates

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification; postponement of compliance dates.

SUMMARY: On November 18, 2016, the Bureau of Land Management (BLM) issued a final rule entitled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation" (the "Waste Prevention Rule" or "Rule"). Immediately after the Waste Prevention Rule was issued, petitions for judicial review of the Rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. In light of the existence and potential consequences of the pending litigation, the BLM has concluded that justice requires it to postpone the compliance dates for certain sections of the Rule pursuant to the Administrative Procedure Act, pending judicial review.

DATES: June 15, 2017.

FOR FURTHER INFORMATION CONTACT: Timothy Spisak at the BLM Washington Office, 20 M Street SE., Room 2134 LM, Washington, DC 20003, or by telephone at 202–912–7311. For questions relating to regulatory process issues, contact Faith Bremner at 202–912–7441.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact these individuals during normal business hours. FRS is available 24 hours a day, 7 days a week to leave a message or question with these individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 2016, the BLM published the Waste Prevention Rule. (81 FR 83008) The Rule addresses, among other things, the loss of natural gas through venting, flaring, and leaks during the production of Federal and Indian oil and gas. The Rule replaced Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (1980) ("NTL–4A"), which governed the venting and flaring of Federal and Indian gas for more than three decades. In addition to updating and revising the requirements of NTL–4A, the Rule contained new requirements that operators capture a certain percentage of the gas they produce (43 CFR 3179.7), measure flared volumes (43 CFR 3179.9), upgrade or replace pneumatic equipment (43 CFR 3179.201–179.202), capture or combust storage tank vapors (43 CFR 3179.203), and implement leak detection and repair (LDAR) programs (43 CFR 3179.301–.305). The Rule did not obligate operators to comply with these new requirements until January 17, 2018. Compliance with certain other provisions of the Rule is already mandatory, including the requirement that operators submit a "waste minimization plan" with applications for permits to drill (43 CFR 3162.3–1), new regulations for the royalty-free use of production (43 CFR subpart 3178), new regulatory definitions of "unavoidably lost" and "avoidably lost" oil and gas (43 CFR 3179.4), limits on venting and flaring during drilling and production operations (43 CFR 3179.101–179.105), and requirements for downhole well maintenance and liquids unloading (43 CFR 3179.204).

Immediately after the Rule was issued, petitions for judicial review of the Rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. The petitioners in this litigation are the Western Energy Alliance (WEA), the Independent Petroleum Association of

(b) (5) [redacted]

(b) (5) [redacted]

America, the State of Wyoming, the State of Montana, the State of North Dakota, and the State of Texas. This litigation has been consolidated and is now pending in the U.S. District Court for the District of Wyoming. *Wyoming* v. *U.S. Dep't of the Interior,* Case No. 2:16–cv–00285–SWS (D. Wyo.). Petitioners assert that the BLM was arbitrary and capricious in promulgating the Rule and that the Rule exceeds the BLM's statutory authority.

On March 28, 2017, the President issued Executive Order No. 13783 (E.O. 13783) entitled, "Promoting Energy Independence and Economic Growth." E.O. 13783 directed the Secretary of the Interior (Secretary) to review the Rule for consistency with the policies set forth in Section 1 of E.O. 13783 and, if appropriate, publish for notice and comment a proposed rule suspending, revising, or rescinding the Rule. E.O. 13783 Sec. 7(b). On March 29, 2017, the Secretary issued Secretarial Order 3349 implementing E.O. 13783. The Department's review of the Rule is ongoing.

The Secretary has received written requests from WEA and the American Petroleum Institute (API) that the BLM suspend the Rule or postpone its compliance dates in light of the regulatory uncertainty created by the pending litigation and the ongoing administrative review of the Rule. Letter from Kathleen M. Sgamma to Secretary Zinke (April 4, 2017); letter from Jack N. Gerard to Secretary Zinke (May 16, 2017). Both API and WEA stated that operators face the prospect of significant expenditures to comply with provisions of the Rule that will become operative in January 2018. WEA specifically noted that the LDAR, storage tank, and pneumatic device provisions will require operators to begin purchasing and installing tens of thousands of replacement parts in the near future.

Section 705 of the Administrative Procedure Act (APA), 5 U.S.C. 705, provides that, "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." The Rule obligates operators to comply with its "capture percentage," flaring measurement, pneumatic equipment, storage tank, and LDAR provisions beginning on January 17, 2018. This compliance date has not yet passed and is within the meaning of the term "effective date" as that term is used in Section 705 of the APA. Considering the substantial cost that complying with these requirements poses to operators (see U.S. Bureau of Land Management, Regulatory Impact Analysis for: Revisions to 43 CFR subpart 3100 (Onshore Oil and Gas Leasing) and 43 CFR subpart 3600 (sic) (Onshore Oil and Gas Operations), Additions of 43 CFR subpart 3178 (Royalty-Free Use of Lease Production) and 43 CFR subpart 3179 (Waste Prevention and Resource Conservation) (November 10, 2016)), and the uncertain future these requirements face in light of the pending litigation and administrative review of the Rule, the BLM finds that justice requires it to postpone the future compliance dates for the following sections of the Rule: 43 CFR 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, and 3179.301–3179.305.

While the BLM believes the Waste Prevention Rule was properly promulgated, the petitioners have raised serious questions concerning the validity of certain provisions of the Rule. Given this legal uncertainty, operators should not be required to expend substantial time and resources to comply with regulatory requirements that may prove short-lived as a result of pending litigation or the administrative review that is already under way. Postponing these compliance dates will help preserve the regulatory status quo while the litigation is pending and the Department reviews and reconsiders the Rule.

The provisions with compliance dates that have passed and are therefore unaffected by this document include: the requirement that operators submit a "waste minimization plan" with applications for permits to drill (43 CFR 3162.3–1), new regulations for the royalty-free use of production (43 CFR subpart 3178), new regulatory definitions of "unavoidably lost" and "avoidably lost" oil and gas (43 CFR 3179.4), limits on venting and flaring during drilling and production operations (43 CFR 3179.101–179.105), and requirements for downhole well maintenance and liquids u… CFR 3179.204).

Separately, the BLM inte… conduct notice-and-comme… rulemaking to suspend or e… compliance dates of those s… affected by the Rule.

II. Postponement of Compl…

Pursuant to Section 705 … the BLM hereby postpones … compliance dates for the following sections affected by the final rule entitled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation", pending judicial review: 43 CFR 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, and 3179.301–3179.305. BLM will publish a document announcing the outcome of that review.

Dated: June 9, 2017.

Katharine S. MacGregor

Delegated the Authority of the Assistant Secretary for Land and Minerals Management.

[FR Doc. 2017–12325 Filed 6–14–17; 8:45 am]

BILLING CODE 4310–84–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135–AA33

Implementing the Federal Civil Penalties Adjustment Act Improvements Act of 2015

AGENCY: National Endowment for the Arts, National Foundation for the Arts and Humanities.

ACTION: Interim final rule; request for comments.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties that may be imposed for violations of the Program Fraud and Civil Remedies Act (PFCRA) and the NEA's Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

DATES:

Effective date: This rule is effective June 15, 2017.

Comments date: Submit comments on or before July 17, 2017.

…ESSES: You may submit comments, …ified by RIN 3135–AA33, by any of …llowing methods:

• *…Federal eRulemaking Portal: …://www.regulations.gov.* Follow the …uctions for submitting comments.

• *…Email: generalcounsel@arts.gov.* …de RIN 3135–AA33 in the subject …f the message.

• *…Mail:* National Endowment for the … Office of the General Counsel, 400 7th Street SW., Second Floor, Washington, DC 20506.

• *Hand Delivery/Courier:* National Endowment for the Arts, Office of the General Counsel, 400 7th Street SW., Second Floor, Washington, DC 20506.

Instructions: All submissions received must include the agency name and docket number or Regulatory

McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: Reg Briefing Tomorrow?

1 message

Bernhardt, David <(b) (6) os.doi.gov> Thu, Aug 24, 2017 at 11:59 AM
To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Venting and flaring. Here is what they are asking me to look to give guidance on potential changes to the existing CFR.

--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
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INFORMATION/BRIEFING MEMORANDUM
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT

DATE: August 18, 2017

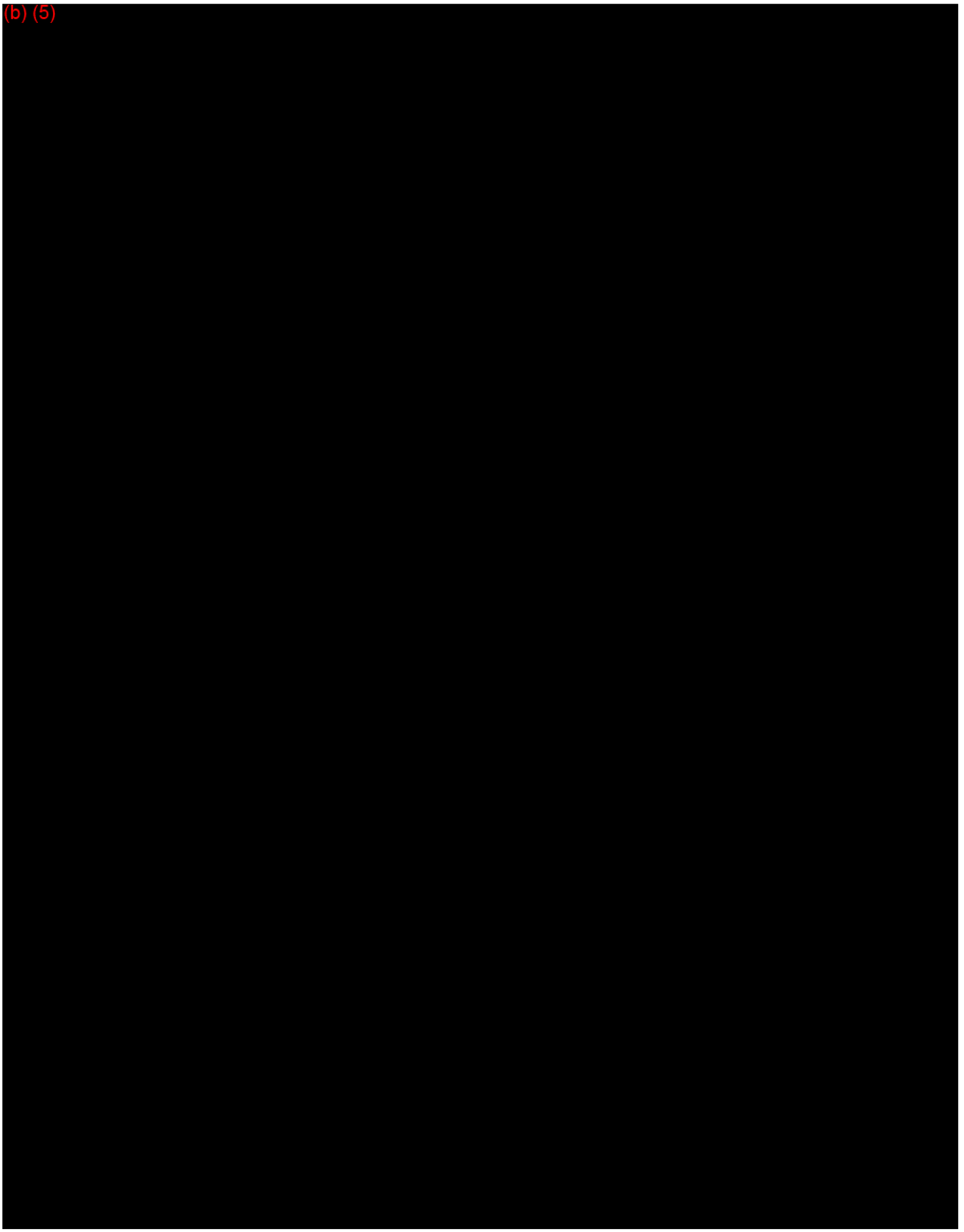
FROM: Michael D. Nedd, Acting Director – Bureau of Land Management (BLM)

SUBJECT: Waste Prevention Rule – Areas for Potential Revision and Schedule

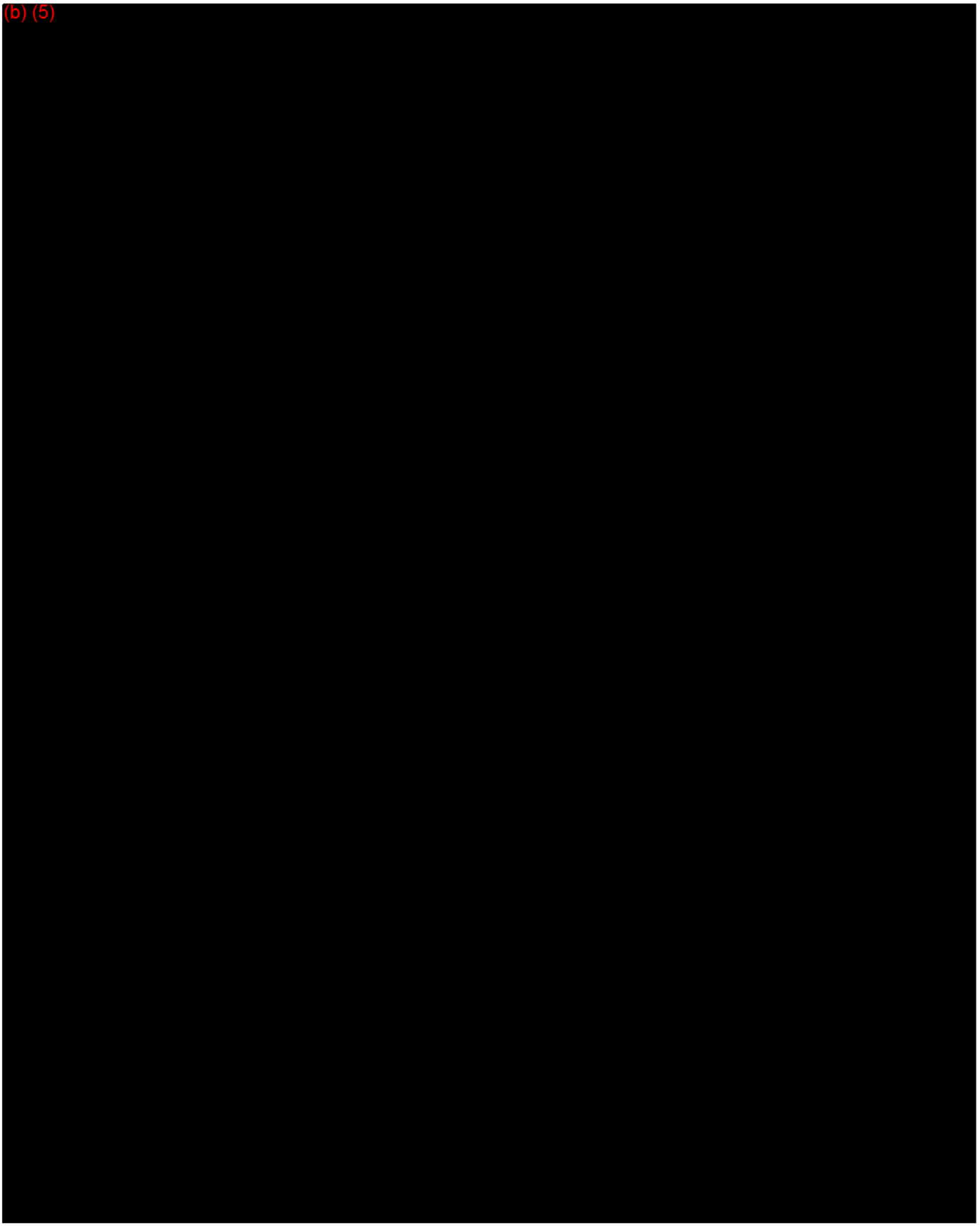
(b) (5)

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(b) (5)



(b) (5)



(b) (5)



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3160 and 3170

[17X.LLWO310000.L13100000.PP0000]

RIN 1004–AE14

Waste Prevention, Production Subject to Royalties, and Resource Conservation

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is promulgating new regulations to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian (other than Osage Tribe) leases. The regulations also clarify when produced gas lost through venting, flaring, or leaks is subject to royalties, and when oil and gas production may be used royalty-free on-site. These regulations replace the existing provisions related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL–4A), which are over 3 decades old.

DATES: The final rule is effective on January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Timothy Spisak at the BLM Washington Office, 20 M Street SE., Room 2134LM, Washington, DC 20003, or by telephone at 202–912–7311. For questions relating to regulatory process issues, contact Faith Bremner at 202–912–7441.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact these individuals during normal business hours. FRS is available 24 hours a day, 7 days a week to leave a message or question with these individuals. You will receive a reply during normal business hours.

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II. Executive Summary

A. Background

This final regulation aims to reduce the waste of natural gas from mineral leases administered by the BLM. This gas is lost during oil and gas production activities through venting or flaring of the gas, and through equipment leaks. While oil and gas production technology has advanced dramatically in recent years, the BLM's rules to minimize waste of gas have not been updated in over 30 years. The Mineral Leasing Act of 1920 (MLA) requires the BLM to ensure that lessees "use all reasonable precautions to prevent waste of oil or gas developed in the land," 30 U.S.C. 225, and that leases include "a provision that such rules . . . for the prevention of undue waste as may be prescribed by [the] Secretary shall be observed," *id.* at § 187. The BLM believes there are economical, cost-effective, and reasonable measures that operators can take to minimize gas waste. These measures will enhance our nation's natural gas supplies, boost royalty receipts for American taxpayers, tribes, and States, reduce environmental damage from venting, flaring, and leaks of gas, and ensure the safe and responsible development of oil and gas resources.

The BLM's onshore oil and gas management program is a major contributor to our nation's oil and gas production. The BLM manages more than 245 million acres of land and 700 million acres of subsurface estate, making up nearly a third of the nation's mineral estate. Domestic production from 96,000 Federal onshore oil and gas wells accounts for 11 percent of the Nation's natural gas supply and 5 percent of its oil. In Fiscal Year (FY) 2015, operators produced 183.4 million barrels (bbl) of oil, 2.2 trillion cubic feet (Tcf) of natural gas, and 3.3 billion gallons of natural gas liquids (NGLs) from onshore Federal and Indian oil and gas leases. The production value of this oil and gas exceeded $20.9 billion and generated over $2.3 billion in royalties, which were shared with tribes, Indian allottee owners, and States.[1] Over the past decade, the United States has experienced a dramatic increase in oil and natural gas production due to technological advances, such as hydraulic fracturing combined with directional drilling. Yet the American public has not benefited from the full potential of this increased production, due to venting, flaring, and leaks of significant quantities of gas during the production process. Federal and Indian onshore lessees and operators reported to the Office of Natural Resources Revenue (ONRR) that they vented or flared 462 billion cubic feet (Bcf) of natural gas between 2009 and 2015—enough gas to serve about 6.2 million households for a year, assuming 2009 usage levels.[2]

Venting, flaring, and leaks waste a valuable resource that could be put to productive use, and deprive American taxpayers, tribes, and States of royalty revenues. In addition, the wasted gas may harm local communities and surrounding areas through visual and noise impacts from flaring, and contribute to regional and global air pollution problems of smog, particulate matter, and toxics (such as benzene, a carcinogen). Finally, vented or leaked gas contributes to climate change, because the primary constituent of natural gas is methane, an especially powerful greenhouse gas (GHG), with climate impacts roughly 25 times those of carbon dioxide (CO_2), if measured over a 100-year period, or 86 times those of CO_2, if measured over a 20-year period.[3] Thus, measures to conserve gas and avoid waste may significantly benefit local communities, public health, and the environment.

Congress has directed the BLM to oversee Federal and Indian oil and gas activities under multiple laws, including the MLA, the Mineral Leasing Act for Acquired Lands of 1947 (MLAAL), the Federal Oil and Gas Royalty Management Act (FOGRMA), the Federal Land Policy and Management Act of 1976 (FLPMA), the Indian Mineral Leasing Act of 1938 (IMLA), the Indian Mineral Development Act of 1982 (IMDA), and the Act of March 3, 1909.[4] In particular, the MLA requires the BLM to ensure that lessees "use all reasonable precautions to prevent waste of oil or gas developed in the land."[5] Leases issued by BLM must ensure that operations are conducted with "reasonable diligence, skill, and care" and that lessees comply with rules "for the prevention of undue waste."[6]

Advancing those mandates, this rule replaces the BLM's decades-old NTL–4A requirements related to venting and flaring, and to royalty-free use of oil and gas production; amends the BLM's oil and gas regulations at 43 CFR part 3160 to include requirements for a waste minimization plan; and adds new subparts 3178 and 3179 to 43 CFR part 3170 that address royalty-free use of lease production (subpart 3178) and waste prevention through reduction of venting, flaring and leaks (subpart 3179). This rule will apply to all Federal and Indian (other than Osage Tribe) onshore oil and gas leases as well as leases and business agreements entered into by tribes (including IMDA agreements), as consistent with those agreements and with principles of Federal Indian law.[7]

This rule implements recommendations from several oversight reviews, including reviews by the Office of the Inspector General of the Department of the Interior (OIG) and the Government Accountability Office (GAO). These reviews raised concerns about waste of gas from Federal and Indian production, found that the BLM's existing requirements regarding venting and flaring are insufficient and outdated, and expressed concerns about the "lack of price flexibility in royalty

[1] Office of Natural Resources Revenue, Statistical Information, *http://statistics.onrr.gov/ReportTool.aspx* using Sales Year—FY 2015—Federal Onshore—All States Sales Value and Revenue for Oil, Natural Gas Liquids (NGL), and Gas products as of September 7, 2016.

[2] BLM analysis of ONRR Oil and Gas Operations Report Part B (OGOR–B) data provided for 2009–2015; *see* Energy Information Administration (EIA), *Trends in U.S. Residential Natural Gas Consumption, http://www.eia.gov/pub/oil_gas/natural_gas/feature_articles/2010/ngtrendsresidcon/ngtrendsresidcon.pdf* (reporting that in 2009, U.S. residential consumption was approximately 74 Mcf per household with natural gas service).

[3] See Intergovernmental Panel on Climate Change, Climate Change 2013: The Physical Science Basis, Chapter 8, *Anthropogenic and Natural Radiative Forcing*, at 714 (Table 8.7), *available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf.*

[4] Mineral Leasing Act, 30 U.S.C. 188–287; Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351–360; Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1701–1758; Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701–1785; Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a–g; Indian Mineral Development Act of 1982, 25 U.S.C. 2101–2108; Act of March 3, 1909, 25 U.S.C. 396.

[5] 30 U.S.C. 225.

[6] 30 U.S.C. 187.

[7] Key statutes underpinning this proposed regulation contain exceptions for the Osage Tribe. Specifically, the Osage Tribe is excepted from the application of both the Indian Mineral Leasing Act and the Federal Oil and Gas Royalty Management Act, 25 U.S.C. 396f; 43 U.S.C. 1702(3), 1702(4). The leasing of Osage Reservation lands for oil and gas mining is subject to special Bureau of Indian Affairs regulations contained in 25 CFR part 226.

notify the BLM of substantive amendments, revisions, or other changes to the applicable State, local or tribal regulation(s) or rule(s). This requirement will ensure that the BLM is aware of changes to State, local or tribal regulations that may impact whether the State, local or tribal regulation or requirement continues to meet the variance criteria established in the final rule. Regarding the comments arguing for a timeline for submittal and processing of the variances, the BLM is confident that it will be able to process these requests in a timely manner that will allow sufficient time for operators to have a clear understanding of their compliance requirements.

Some commenters also expressed concern with the proposed BLM State Director review of the variance requests. These commenters asserted that delegating the approval process to the BLM State Director could result in uneven treatment among States. The BLM agrees that achieving consistent implementation of the regulations is an important goal, and this is one reason why the BLM does not believe that decisions on variance requests should be made below the BLM State Director level. Further, the BLM believes that BLM State Directors are in a good position to evaluate how State, local or tribal rules or requirements compare to the requirements of this rule, given their familiarity with the regulatory regimes that apply in the relevant State or States. In addition, once the rule is in effect, the BLM would have the opportunity to issue guidance to enhance coordination among State Directors in evaluating variances, as well as with the BLM Washington office, to help ensure consistency across the BLM State Offices. Finally, the more specific criteria in the final rule for evaluating a variance request will enhance consistency across States.

Some commenters also opposed the proposed provision in § 3179.401(d) stating that the "BLM reserves the right to rescind a variance or modify any condition of approval." These commenters asserted that such a proposal undermines certainty for operators and discourages States and tribes from seeking a variance. Other commenters requested that the BLM include an appeals process for revoked or denied variances, stating that if a variance were requested and denied, States would have no administrative means by which to address the BLM decision without going to court.

The BLM believes that maintaining BLM authority to rescind a variance or modify any condition of approval is necessary to guard against situations in which a variance leads to unintended or unforeseen consequences that run counter to the BLM's determination that the State, local, or tribal regulation performs at least as well as the BLM rule. The BLM expects that such situations will arise infrequently, but the BLM nevertheless believes it is important to include a mechanism for addressing such situations as they occur. After considering the comments, the BLM determined that consideration of waste reduction, environmental, and safety interests outweighs commenters' concerns. As a result, the final rule maintains the BLM's discretion to rescind a variance or modify any condition of approval. Regarding the comments requesting that the BLM include an appeals process for revoked or denied variances, the BLM did not provide for administrative appeals on similar variance decisions under the hydraulic fracturing rule, and the BLM is maintaining this practice in this final rule. Applying this approach also helps to avoid a protracted appeals process with respect to State and tribal variances.

VIII. Analysis of Impacts

A. Description of the Regulated Entities

1. Potentially Affected Entities

Entities that will be directly affected by the rule include most, if not all, entities involved in the exploration and development of oil and natural gas on Federal and Indian lands. According to AFMSS data (as of March 27, 2015), there are up to 1,828 entities that currently operate Federal and Indian leases.[155] We believe that these 1,828 entities will be most affected by the rule, in addition to entities currently involved with drilling and support activities, and any entities that become involved in the future.

The potentially affected entities are likely to fall within one of the following industries, identified by the North American Industry Classification System (NAICS) codes:

- NAICS Code 21111 "Oil and Gas Extraction"
- NAICS Code 213111 "Drilling Oil and Gas Wells"
- NAICS Code 213112 "Support Activities"

According to 2014 data from the U.S. Census Bureau, there were 6,532 entities directly involved in extraction of oil and gas in the United States, 2,121 entities involved in the drilling of wells, and 8,577 entities providing other support functions.[156] Therefore, the approximately 17,000 entities associated with developing, and producing of domestic oil and gas[157] represent an upper bound estimate of the operators that could potentially be affected by this rulemaking.

2. Affected Small Entities

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act.[158] For mining, including the extraction of crude oil and natural gas, the SBA defines a small entity as an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies, with fewer than 1,250 employees. For entities drilling oil and gas wells, the threshold is 1,000 employees. For entities involved in support activities, the standard is annual receipts of less than $38.5 million Table 9–3a in the RIA displays the number of establishments in the oil and gas sector using a 1,000 employee cutoff. This table shows that over 99% of the establishments involved in oil and gas extraction and the drilling of oil and gas wells are classified as small.

To estimate a percentage of small firms involved in oil and gas support activities, we reference Table 9–3d of the RIA, which provides the NAICS information for firms involved in oil and gas support activities based on the size of receipts. The most recent data available from the U.S. Census Bureau for establishment/firm size based on receipts is for 2007. Of the firms providing oil and gas support activities in 2007, about 97 percent had annual receipts of less than $35 million and are classified as small.[159]

B. Impacts of the Requirements

1. Overall Costs of the Rule

Overall, the BLM estimates that this rule will pose costs of about $114–279 million per year (with capital costs annualized using a 7% discount rate) or $110–275 million per year (with capital costs annualized using a 3% discount rate).[160] These costs include engineering compliance costs and the social cost of minor additions of carbon dioxide to the

[155] The actual number is expected to be slightly lower due to duplicate entries.

[156] RIA at 122.

[157] U.S. Census Bureau data does not readily differentiate between the number of firms involved in oil development and production activities versus gas development and production.

[158] 13 CFR 121.201.

[159] U.S. Census Bureau does not provide receipt data that allow a break at the $38.5 million threshold as defined by SBA. As such, the 97 percent figure is a slight underestimate.

[160] RIA at 4.

the owners' mineral resources.[95] Additionally, the BLM believes tribal members and individual Indian mineral owners who live near Indian oil and gas development will realize environmental benefits as a result of this rule's reductions in flaring and air pollution from Indian oil and gas development. During public comment hearings, the BLM heard from a number of tribal members who raised concerns about the impacts of vented and leaked gas on their health, highlighting in particular increases in ozone pollution and air toxics. Tribal members also detailed the impacts of living near numerous large flares, noting the resulting noise and light pollution. The BLM believes that this rule will help to reduce some of these impacts on tribal members.

In short, the BLM has the authority to manage public and tribal oil and gas resources to reduce waste and ensure environmentally responsible development. In response to the notice of proposed rulemaking, the BLM received many comments asserting a range of different arguments regarding the BLM's exercise of its legal authority in promulgating this rule. The most salient of these arguments are addressed later in this preamble, but the BLM did not make any changes to this rule based on comments about the BLM's authority.

D. Stakeholder Outreach

In 2014 and again in in 2016, the BLM conducted a series of forums to consult with tribal governments[96] and solicit stakeholder views to inform the BLM's development of the proposed and final rules. In 2014, the BLM held public meetings in Denver, Colorado (March 19, 2014), Albuquerque, New Mexico (May 7, 2014), Dickinson, North Dakota (May 9, 2014), and Washington, DC (May 14, 2014).[97] On each of those days, the BLM held a tribal outreach session in the morning and a public outreach session in the afternoon. In advance of the tribal outreach sessions, the BLM sent letters to over 200 tribal leaders that have previously expressed interest in oil and gas related matters. These letters explained generally the proposed rulemaking, invited the tribal leaders to attend the outreach sessions, provided contact persons for further information, and provided an email address for submitting comments. At the 2014 Denver, Colorado, and Washington, DC sessions, the tribal and public meetings were live streamed to allow for the greatest possible participation by interested parties. The tribal outreach sessions also served as initial consultation with Indian tribes to comply with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

As part of our pre-proposal outreach efforts, the BLM accepted informal comments generated as a result of the public/tribal outreach sessions through May 30, 2014. A total of 29 unique comments were received: 12 from the oil and gas industry and trade associations, 6 from NGOs representing 37 organizations, 2 from government officials or elected representatives, and 9 from private citizens. Two hundred and sixty comments from private citizens were part of an email campaign.

After the proposed rule was published on February 8, 2016, we conducted a second series of paired outreach meetings, with a tribal meeting each morning and a public meeting each afternoon. We held these meetings at four locations: Farmington, New Mexico (February 16, 2016), Oklahoma City, Oklahoma (February 18, 2016), Denver, Colorado (March 1, 2016), and Dickinson, North Dakota (March 3, 2016). Again, in advance of the tribal outreach sessions, the BLM sent letters to over 200 tribal leaders that have previously expressed interest in oil and gas related matters. These letters explained generally the proposed rule, invited the tribal leaders to attend the outreach sessions, provided contact persons for further information, and provided an email address for submitting comments. The public outreach sessions included a telephone conference call-in number to allow members of the public who could not attend in person to listen live to the proceedings.

In addition, the BLM conducted outreach to States with extensive oil and gas production on BLM-administered leases. Prior to the proposal, the BLM reviewed State regulations and guidance, and contacted State regulatory bodies that oversee aspects of oil and gas production to discuss their requirements and practices. After issuing the proposal, the BLM conducted seven online meeting sessions with State regulators from Alaska, Colorado, New Mexico, North Dakota, Utah (two meetings), and Wyoming.

In response to the proposed rule and these outreach meetings, the BLM received approximately 330,000 total comment submissions from Federal, State, and local governments and agencies, tribal organizations, industry representatives, non-governmental organizations, individuals, and other stakeholders. Of the approximately 330,000 comment submissions, approximately 1,000 were unique comments, with the remaining comments coming from mass-mailing campaigns from several organizations. The BLM closely reviewed and analyzed the comments we received, and made revisions to the proposed rule based on the information, data, analysis, insights, and viewpoints provided in the comments. The final rule reflects the very extensive input that the BLM gathered from these public meetings, discussions with States and tribes, and the public comment process.

IV. Summary of Final Rule

Like the proposed rule, the final rule focuses on key areas in the oil and gas production process where waste-prevention actions are most effective and least costly. Specifically, we are adopting requirements to reduce waste from the following: Venting or flaring of associated gas from producing oil wells; gas leaks from equipment and facilities located at the well site, as well as from compressors located on the lease; operation of high-bleed pneumatic controllers and certain pneumatic pumps; gas emissions from storage vessels; well maintenance and liquids unloading; and well drilling and completions. Based on the available data regarding methane emissions and the numbers and types of sources of gas losses from Federal and Indian leases, we believe that these aspects of the production process offer the best opportunities for reducing waste.

Like the proposed rule, the final rule requires operators to flare gas rather than vent it, except in specified circumstances, such as emergencies, the routine operation of certain equipment, and when flaring is technically infeasible. The final rule then requires operators to avoid wasteful flaring of gas by capturing for sale or using on-site specified percentages of their adjusted total gas production. Beginning one year from the effective date of the final rule, operators must capture 85 percent of their adjusted total gas production each month, and this gradually increases to 98 percent by 2026. An operator's adjusted total gas production is based on the quantity of high pressure gas produced from the operator's development wells that are in

[95] The remainder of this preamble refers to this analysis as the BLM's determination that, as a result of its trust obligations, it has an obligation or mandate to reduce waste from Indian lands, just as it does to reduce waste from BLM-administered Federal Lands.

[96] In developing this rule, the BLM consulted with tribal stakeholders in compliance with 25 U.S.C. 2107, 512 DM 4, and 512 DM 5.

[97] See the BLM oil and gas program's outreach-events page: *http://www.blm.gov/wo/st/en/prog/energy/public_events_on_oil.*

production, adjusted to exempt a specified volume of gas per well. The exempted or "flaring allowable" volume declines over time. Beginning one year from the effective date of the final rule, operators are allowed to exempt 5,400 Mcf gas per well per month, and this quantity gradually declines to 750 Mcf by 2025.

With respect to leaks, the final rule largely follows the proposed rule, except that the required frequency of inspection is set at two times a year, and does not vary according to the number of leaks found. Operators must use optical gas imaging equipment or portable analyzers deployed according to Method 21, and leaks must be repaired and retested within specified time frames. The final rule clarifies the approval process for alternative leak detection devices and for operators' individual alternative leak inspection programs.

Like the proposed rule, the final rule includes requirements to update old and inefficient equipment, and to follow best practices to minimize waste through venting. Thus, operators must replace high-bleed pneumatic controllers and certain pneumatic pumps with less wasteful controllers and pumps, and capture or flare any high volumes of gas that would otherwise be vented from tanks. In addition, the final rule requires operators to capture, flare, use, or reinject gas produced during well drilling and well completions, and it limits the quantities of gas that may be vented royalty-free during well testing.

The final rule continues to address whether and when lost oil or gas is royalty-bearing, based on whether the loss is deemed unavoidable (royalty-free) or avoidable (royalty-bearing). Relative to the proposed rule, and after our evaluation of public comments, the final rule somewhat expands the list of circumstances in which a loss of oil or gas is deemed unavoidable (thereby expanding the circumstances under which the loss of gas is considered royalty-free), and retains the proposed approach that all oil or gas that is not specifically defined as unavoidably lost is deemed to be avoidably lost and subject to royalties. Unavoidable losses include oil or gas lost in emergencies, losses from normal equipment operation when the operator is in compliance with all requirements to update equipment, and gas that is flared from wells not connected to a gas pipeline (unless the operator has not met applicable gas capture requirements). Because the BLM believes that it is reasonable to expect operators to reduce waste in order to comply with the final rule's capture percentage requirements, any quantities of flared gas that cause the operator to violate the applicable capture requirements are deemed avoidable losses and subject to royalties.

In addition, the BLM is finalizing the proposed change to the royalty provisions, to align the provisions with the BLM's statutory authority and allow the BLM to set royalties for competitive leases at or above 12.5 percent. At this time, however, the BLM is not setting the royalty rate above 12.5 percent in this regulation.

Like the proposed rule, the final rule aligns the requirements of this rule to the extent practicable with EPA and State requirements. It also avoids potential regulatory overlap by exempting certain equipment covered by relevant EPA rules, and deeming the operator's compliance with relevant EPA requirements to satisfy the BLM requirements as well.

The final rule also allows a State or tribe to request a variance from particular BLM requirements. If the variance is granted, the BLM has authority to enforce the specific provision(s) of the State, local, or tribal rule for which the variance was granted, instead of the comparable provision(s) of the BLM rule. As clarified in the final rule, the BLM may grant a State or tribal variance request if the BLM determines that the State, local, or tribal rule would perform at least as well as the affected BLM regulatory provision in reducing waste of oil and gas, reducing environmental impacts from venting and or flaring of gas, and ensuring the safe and responsible production of oil and gas.

V. Major Changes From Proposed Rule

Based on information that has become available since the proposed rule, and the extensive material BLM received through public comments, the BLM has made changes and adjustments to the proposed regulatory text. This section of the preamble summarizes the most significant of those changes and addresses some of the key public comments.

This section only addresses a few substantive areas in which the BLM made significant changes from the proposed rule. Section VI discusses significant comments received on other aspects of the rule. The final text of all of the rule provisions, and changes made in light of all public comments, are discussed in Section VII, Section by Section. Finally, additional public comments are addressed in the separate Response to Comments document, which is available to the public on the BLM Web site and is part of the rule-making record.

A. Venting Prohibition and Capture Targets

As discussed in section III.B.2.a of this preamble, routine venting and flaring of gas from oil or gas wells waste significant volumes of natural gas. In 2014, for example, operators vented about 30 Bcf and flared at least 81 Bcf from BLM-administered leases—4.1 percent of the total production from those leases in that year, and sufficient gas to supply nearly 1.5 million households with gas for a year.[98] The final rule aims to reduce this waste using a two-pronged approach: A prohibition on venting, and capture targets to reduce flaring.

1. Venting Prohibition

a. Requirements of Final Rule

First, final rule § 3179.6 prohibits venting from oil and gas wells, except under certain enumerated conditions. The circumstances in which venting is permissible include: When flaring is technically infeasible, such as when the gas is not readily combustible or the volumes are small; when the gas is vented during normal operation of an on-site, gas-activated pneumatic pump or controller; when the gas is vented from a storage vessel, provided that § 3179.203 does not require flaring of the gas; when the gas is vented during downhole well maintenance or liquids unloading, provided those operations are conducted in accordance with § 3179.204 of the final rule; and when gas is vented through a leak, provided that the operator is complying with the rule's LDAR provisions in §§ 3179.301–3179.305. Venting is also permissible during "emergencies," which final rule § 3179.105 defines as situations in which the loss of gas is "uncontrollable," and venting or flaring is "necessary to avoid risk of an immediate and substantial adverse impact on safety, public health, or the environment." In addition, venting is allowed if necessary to allow facility or pipeline non-routine maintenance to be performed. Any venting of gas from oil or gas wells that does not fit within one of the circumstances listed in § 3179.6 is a violation of this rule and could result in enforcement actions. In addition, gas vented in violation of this rule will be deemed "avoidable" under final rule § 3179.4, and thus subject to royalties under final rule § 3179.5.

[98] BLM analysis of ONRR OGOR–B data provided for 2009–2015 and EPA GHG Inventory data for 2014.

Methane

43 CFR Parts 3100, 3160, and 3170

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8/9/17

(b) (5)

[redacted]

FACT SHEET ON METHANE AND WASTE PREVENTION RULE

OVERVIEW: The Bureau of Land Management (BLM) has updated its regulations to reduce the waste of natural gas from flaring, venting, and leaks from oil and gas production operations on public and Indian lands. The final requirements, which will be phased in, will help curb waste of our nation's natural gas supplies; reduce harmful air pollution, including greenhouse gases; and provide a fair return on public resources for federal taxpayers, Tribes, and States.

The BLM's final rule requires oil and gas producers to take commonsense and cost-effective measures to reduce this waste of gas, modernizing the existing, more than 30-year-old oil and gas production rules and bringing them in line with technological advances in the industry. In addition, the rule modifies the existing royalty rate provisions to better align with the BLM's authority and enhance flexibility, but the rule would not raise royalty rates.

FACT: The BLM's onshore oil and gas management program is a major contributor to our nation's oil and gas production. Domestic production from almost 100,000 federal onshore oil and gas wells accounts for five percent of the nation's oil supply and eleven percent of its natural gas. In Fiscal Year 2015, the production value of this oil and gas was worth almost $21 billion and generated over $2 billion in royalties.

FACT: Large quantities of natural gas are wasted during oil and gas production. Between 2009 and 2015, oil and gas producers on public and Indian lands vented, flared and leaked about 462 billion cubic feet (Bcf) of natural gas. That's enough gas to supply about 6.2 million households for a year. These losses create a myriad of problems, including: releasing harmful emissions, including methane, into the atmosphere; safety issues, if not properly handled; and waste of a valuable domestic energy resource.

FACT: Taxpayers are losing out. States, Tribes and federal taxpayers also lose royalty revenues when natural gas is wasted – as much as $23 million annually in royalty revenue for the Federal Government and the States that share it, according to a 2010 Government Accountability Office (GAO) report.

FACT: The rule minimizes waste of natural gas. The final rule will save and put to productive use up to 41 Bcf of gas a year – enough to supply up to about 740,000 households each year. Overall, the rule will reduce flaring by an estimated 49 percent and venting and leaks by roughly 35 percent (compared to 2014 rates).

FACT: Inaction is not an option. Methane, a powerful greenhouse gas about 25 times more potent than carbon dioxide, accounts for nine percent of all U.S. greenhouse gas emissions, and almost one-third of that is estimated to come from oil and gas operations. U.S. methane emissions are projected to rise substantially without additional steps to lower them. Several states, including North Dakota, Colorado, Wyoming, Utah and most recently Pennsylvania, as well as the U.S. Environmental Protection Agency (EPA), have also taken steps to limit venting, flaring and/or leaks.

FACT: The rule will reduce emissions that worsen climate change. BLM estimates that this rule could avoid an estimated 175,000-180,000 tons of methane emissions per year, roughly equivalent to 4.4-4.5 million metric tons of carbon dioxide emissions. This is also roughly equivalent to eliminating the greenhouse gas emissions from 924,000 to 950,000 vehicles.

FACT: The rule's benefits are projected to outweigh its costs. Using conservative assumptions, the BLM estimates that the rule's net benefits could range from $46 to $204 million per year. Benefits include revenues for operators from sale of recovered natural gas and environmental benefits of reducing methane emissions and other air pollutants.

FACT: Impacts to operators are expected to be minimal. Many oil and gas operators are voluntarily taking steps required in the rule to reduce wasted gas and improve operations. The BLM estimates that the annual cost to industry of implementing the rule will be $110-279 million. Individual, small business operators may see profit margins reduced by less than two-tenths of one percent, on average. About 40 percent of natural gas now vented or flared from onshore Federal leases could be economically captured with currently available technologies, according to the 2010 GAO report.

FACT: The rule reflects stakeholder outreach through public meetings and tribal consultations. The BLM conducted public and tribal meetings in 2014 and again in 2015 during the public comment period. The BLM received over 300,000 comments on the proposed rule. The BLM has also coordinated with individual states, as well as the Environmental Protection Agency, to avoid inconsistency or redundancy in regulations.

FINAL RULE OVERVIEW

The Mineral Leasing Act requires the BLM to ensure that operators "use all reasonable precautions to prevent waste of oil or gas." Important elements of the final rule include:

LIMITING ROUTINE GAS FLARING

Until now, there has been no upper limit on how much an operator can flare. The rule requires operators to capture most of their gas after accounting for specified volumes of allowed flaring.

- Capture targets phase in from 2018-2026 from 85% to 98% of associated gas produced from development oil wells (i.e., targets don't apply to exploratory wells, well testing).
- Capture targets do not apply to "flaring allowable" volumes, which phase down from 2018-2025 from 5,400 Mcf/per well to 750 Mcf/per well, on average across operations in a state.
- Capture targets can be met lease-by-lease or through averaging state-wide across all of an operators' operations on federal and Indian leases.
- Excess flaring beyond the capture targets pays royalty and is subject to enforcement.
- Provides for alternative requirement if meeting capture target would cause an operator to cease production and abandon significant recoverable reserves under a lease.
- Operators could comply with the proposed flaring limits by: expanding gas-capture infrastructure (e.g. installing compressors to increase pipeline capacity, or connecting wells to existing infrastructure through gathering lines); adopting alternative on-site capture technologies (e.g. compressing the natural gas or stripping out natural gas liquids and trucking the product to a gas processing plant); or temporarily slowing production at a well to minimize losses until capture infrastructure is installed.
- Also improves disclosure of flared volumes by requiring measurement (through meters or calculation based on gas-to-oil ratio) when flared volumes reach 50 Mcf/day.

PRE-DRILLING PLANNING FOR GAS CAPTURE

Until now, we had no mechanism to better align timing of well development and pipeline installation.

- Before drilling a development oil well, operators would need to evaluate opportunities for gas capture and prepare a waste minimization plan, which must be submitted with an Application for Permit to Drill.
- The plan must meet various requirements, and must be shared with midstream gas capture companies to facilitate timely pipeline development, but plan details would not be enforceable elements of the permit to drill.

DETECTING LEAKS

- The rule requires operators to use an instrument-based leak detection program to find and repair leaks. Operators may use infrared cameras, portable analyzers assisted by audio, visual and olfactory inspection, or other methods approved by the BLM.
- Operators must conduct inspections semi-annually for all sites except compressor stations, and quarterly for compressor stations.
- This tracks EPA's fugitive emissions requirements for new wells and facilities, and is similar to leak detection and repair requirements in Colorado and Wyoming.
- Operators in compliance with EPA fugitive emissions requirements for new wells would be deemed in compliance with the BLM requirements.

- Provides for alternative requirement if meeting the limit would cause an operator to cease production and abandon significant recoverable reserves under a lease.

REDUCING VENTING

- Except in narrowly specified circumstances, operators may not vent natural gas. Exceptions include emergencies and venting from certain equipment subject to limits.
- Operators must replace "high bleed" continuous pneumatic controllers with low/zero bleed controllers within one year, tracking requirements in Colorado and Wyoming.
- Operators must replace pneumatic diaphragm pumps with solar pumps, if adequate for the function, or route the pumps to a flare (if one is available on-site) within one year. This is similar to Wyoming requirements and EPA requirements on new pumps.
- Within one year, operators must capture or flare gas from storage tanks that vent more than six tons of volatile organic compounds (Volatile Organic Compounds)/year. This affects only the highest venting tanks and is similar to EPA requirements for new tanks and Colorado and Wyoming requirements for new and existing tanks.
- Operators unloading liquids from wells would be required to use best management practices– e.g., optimize automated plunger lift systems to reduce venting; stay on site during manual purging.
- Operators must capture, flare, use, or re-inject gas released during well completions, but operators in compliance with EPA's similar requirements would be deemed in compliance with the BLM requirements.
- An operator may be exempted by demonstrating that compliance with the requirement would impose such costs as to cause the operator to cease production and abandon significant quantities of recoverable reserves under the lease.

CLARIFYING AND REVISING ROYALTY RATES

- The rule revises existing royalty provisions for onshore oil and gas leases to specify a royalty rate at or above 12.5 percent for new competitive leases, consistent with the statutory authority in the Mineral Leasing Act. The prior regulation specified a rate of 12.5 percent and left the BLM no discretion to raise the rate as conditions change.
- This responds to findings and recommendations in audits from the Government Accountability Office and Department of Interior Office of Inspector General.
- The BLM is not currently raising royalty rates for new competitive leases.
- The rule also clarifies that royalties apply only to gas flared from wells already connected to gas capture infrastructure. This removes the burden on operators to submit applications for approval to flare royalty-free.

INTERACTION WITH STATE AND TRIBAL RULES

- States/tribes may be granted a variance, which applies state/tribal regulations in lieu of provisions of BLM regulations.
- The BLM may grant a variance if the State/tribe shows that the State/tribal rule will perform at least as well as the provisions of the BLM's rule in reducing waste, reducing environmental impacts, and ensuring safe production.

###

METHANE

[redacted] (b) (5)

METHANE

Enviros eye multiple legal battles as Trump admi

Ellen M. Gilmer, E&E News reporter

Published: Thursday, June 15, 2017



The Trump administration is postponing Obama-era methane restrictions from U.S. EPA and the Bureau of Land Management. Tim Evanson/Wikipedia

The Trump administration will likely end up in court defending recent decisions to postpone Obama-era requirements for slashing greenhouse gas emissions from the oil and gas industry.

In a one-two punch this week, U.S. EPA and the Interior Department announced delays to separate regulations designed to reduce the amount of heat-trapping methane released into the atmosphere from oil and gas wells and related infrastructure.

V&F rule? Text?

Interior's Bureau of Land Management yesterday rolled out plans to indefinitely postpone key provisions of its Methane and Waste Prevention Rule while a related legal battle plays out. The rule took effect in January after a federal court rejected state and industry requests for a preliminary injunction that would have halted it. - Prior lit

But the Trump administration is rethinking the rule. After a Congressional Review Act effort failed to sink the Obama-era standard, industry pressed the agency to move quickly to bring relief from upcoming requirements that many oil and gas companies consider costly and excessive.

The newly announced stay affects January 2018 deadlines for measuring flared gas, upgrading equipment, capturing vapors from storage tanks, and implementing leak detection and repair programs. Other provisions of the rule, including general restrictions on methane venting and flaring, are already in effect.

In a *Federal Register* notice published today, acting Assistant Secretary for Land and Minerals Management Katharine MacGregor said Interior is pausing the rule under an Administrative Procedure Act provision that allows agencies to postpone the effective date of rules that are challenged in court.

"Postponing these compliance dates will help preserve the regulatory status quo while the litigation is pending and the Department reviews and reconsiders the Rule," the notice says.

The APA provision, Section 705, states, "When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." Critics of the agency's decision say Section 705 cannot be applied to the methane rule because, while various compliance deadlines are phased in over time, the rule itself has already taken effect.

"[Section] 705 gives them some authority to stay rules before they go into effect," Earthjustice attorney Robin Cooley told E&E News. "This rule went into effect in January of this year. If they want to change the rule, whether

that's the substantive provisions or the compliance dates, they have to go through a notice-and-comment rulemaking and involve the public in that decisionmaking. So this is kind of an end run around that process."

Cooley noted that the APA provision's use of "effective date" clearly applies to a rule itself, not individual compliance deadlines.

"It just makes sense because if all rules that went into effect were suddenly just up in the air — rules have all kinds of different compliance dates at different periods — it would inject this real uncertainty into any rulemaking if the agency could come back at any time and say, 'Oh, we didn't mean that,' and stay particular provisions," she said. "That was not the intent of Section 705."

Earthjustice and other groups that support the methane rule could file suit as soon as this week.

Nearly identical arguments are playing out in a legal battle over BLM's decision to use Section 705 to pause the agency's valuation rule for calculating royalties on fossil fuels produced on federal lands. That rule took effect Jan. 1 of this year.

California and New Mexico sued over the stay, arguing that "an agency cannot 'postpone' the effective date of a rule when that effective date has already come and gone." The case is moving forward in the U.S. District Court for the Northern District of California.

EPA's rule

Separate legal battles are brewing over EPA's unveiling Tuesday of a proposed two-year freeze of the agency's New Source Performance Standards for the industry.

The proposal, along with a proposed three-month buffer postponement, must go through a 30-day public comment period before taking effect (***Energywire***, June 14). Environmentalists have promised to go to court once EPA Administrator Scott Pruitt finalizes the delay.

"We have to file comments first, but when [Pruitt] finalizes this puppy, we'll see him in court," Natural Resources Defense Council attorney David Doniger said on Twitter after EPA announced the proposed two-year freeze.

A coalition of environmental groups is already in court fighting for the Obama EPA standards, which require industry to check for and repair methane leaks on new and modified sources. The groups quickly intervened in litigation last year to defend the rule against attacks from industry and several states. That case has since been put on ice while the Trump administration rethinks the rule.

The groups were back in court with a new lawsuit last week, challenging a separate 90-day administrative stay of the rule that took effect earlier this month. They made an emergency request for the U.S. Court of Appeals for the District of Columbia Circuit to block EPA from pausing the standards. EPA's response to the request is due today.

Environmental groups say they're ready to push forward with additional legal action.

"We have already challenged the unlawful 90-stay on the EPA methane rule, and will continue to oppose attempts by this Administration to delay or destroy important health protections needed by Americans," the Clean Air Task Force's Sarah Uhl said in a statement.

The oil and gas industry, meanwhile, is backing the Trump administration's rollback efforts. Several oil and gas industry groups yesterday lined up in support of the agency in litigation over the existing stay (***E&E News PM***, June 14).

Industry supporters maintain that both the EPA rule and the BLM rule were unlawful, stretching beyond each agency's authority. Western Energy Alliance President Kathleen Sgamma said yesterday that BLM's rule strayed into state and EPA territory by attempting to regulate air quality, while EPA's standards lacked the necessary legal underpinning: a formal finding that methane from the oil and gas industry endangers public health. Rule supporters counter that the Obama administration's 2009 endangerment finding for greenhouse gases covers methane.

Twitter: **@ellengilmer** | Email: **egilmer@eenews.net**

Advertisement

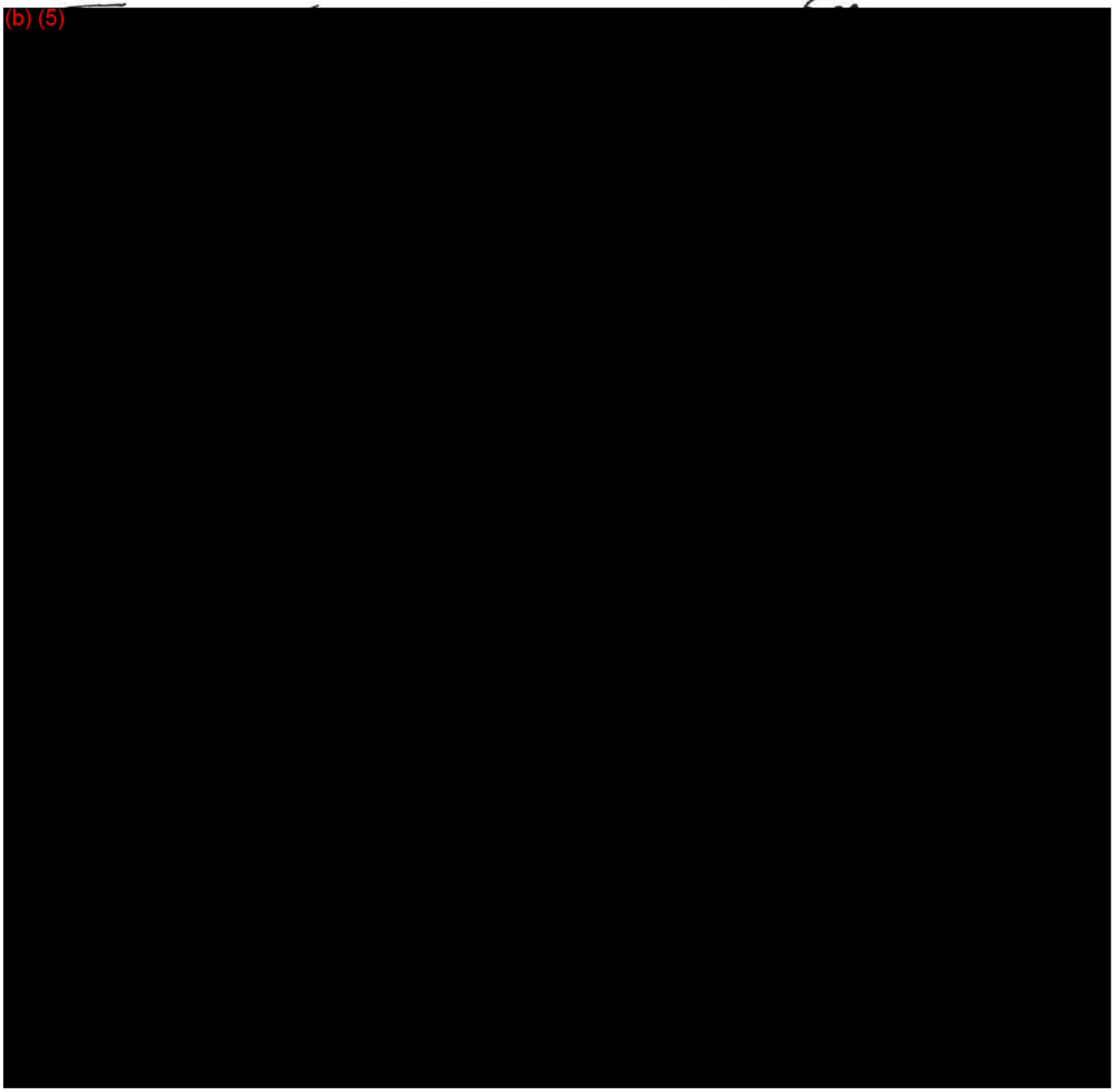
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Tues
1/9/18

DB

(b) (5)



My thoughts

(b) (5)



(b) (5)





McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Re: DS Bernhardt - Quick recusal question

1 message

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Wed, Feb 28, 2018 at 9:39 AM
To: "Snow, Robert" <robert.snow@sol.doi.gov>
Cc: "Brown, Carter" <carter.brown@sol.doi.gov>, "Lacroix, David" <david.lacroix@sol.doi.gov>

Hi Bob,

As you can see from David's recusal (attached), he is subject to both 5 CFR 2635.502 and the administration ethics pledge with respect to Brownstein Hyatt. Accordingly, he may not participate in any particular matter involving a specific party or parties (including litigation) in which Brownstein Hyatt is or represents a party. This also includes any meeting or other communication with Brownstein Hyatt unless (1) there are five or more different stakeholders present and (2) no particular matters involving a specific party or parties are discussed. Accordingly, if we are able to determine whether Brownstein Hyatt represents any party in this litigation, we should do so and, if they do, David should not participate in the litigation per his recusal requirements.

CAWCD is not on David's recusal lists.

Please note that this does not address the potential application of any professional responsibility rules; it only pertains to the Federal ethics rules.

Thanks,
Ed

- Stewardship for America with Integrity and Excellence -

--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6) [redacted]

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Tue, Feb 27, 2018 at 2:19 PM, Snow, Robert <robert.snow@sol.doi.gov> wrote:
+ Carter

Resending as I forgot to cc Carter Brown on this chain. Sorry ... Bob

---------- Forwarded message ----------
From: **Snow, Robert** <robert.snow@sol.doi.gov>
Date: Tue, Feb 27, 2018 at 2:18 PM
Subject: DS Bernhardt - Quick recusal question
To: Edward McDonnell <edward.mcdonnell@sol.doi.gov>

Hi Ed - I'm hoping that things are quieting down a bit for you and don't want to add to your workload but I have a quick recusal question for you. Here's the question:

(b) (5) [redacted]

Based on the above, would you have sufficient information to determine whether or not DS Bernhardt is recused in discussions regarding this litigation?

Thanks,
Bob Snow

Bernhardt, David - Ethics Recusal.pdf
955K



McDonnell, Edward <edward.mcdonnell@sol.doi.gov>

Fwd: DS Bernhardt - Quick recusal question

McDonnell, Edward <edward.mcdonnell@sol.doi.gov> Wed, Feb 28, 2018 at 8:45 AM
Draft To: "Snow, Robert" <robert.snow@sol.doi.gov>
Cc: "Brown, Carter" <carter.brown@sol.doi.gov>

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- Stewardship for America with Integrity and Excellence -

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

Main Interior Building
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Cell: (202) 510-8427

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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(b) (5) [redacted]

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Thanks,
Bob Snow

Bernhardt, David - Ethics Recusal.pdf
955K

THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

AUG 15 2017

To: Secretary
Acting Solicitor
Acting Assistant Secretaries
Acting Bureau Directors
Associate Deputy Secretary
Chief of Staff
Deputy Chief of Staff
Designated Agency Ethics Official (DAEO)

From: Deputy Secretary

Subject: Ethics Recusal

The purpose of this letter is to inform you that in accordance with my ethics agreement (attached) of May 1, 2017, as required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(l), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former employer or client of mine is a party or represents a party for a period of one year after I last provided service to that employer or client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

As a Trump Administration political appointee, I have signed the Ethics Pledge (Exec. Order No. 13770) and I understand that I will be bound by the requirements and restrictions therein in addition to the commitments that I have made in this and any other ethics agreement. Accordingly, I will not participate personally and substantially, for two years after appointment, in any particular matter involving specific parties in which a former employer or client of mine is or represents a party, if I served that employer or client during the two years prior to my appointment,

unless first authorized to participate, pursuant to Section 3 of Exec. Order No. 13770. Moreover, this two-year prohibition forbids my participation in any meeting or other communication with these entities unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

I am aware that I am prohibited by 30 U.S.C. § 1211(f) from holding a financial interest in any surface or underground coal mining operation. Additionally, I am aware that my position is subject to the prohibitions against holding any financial interest in federal lands or resources administered or controlled by the Department of the Interior extended to me by supplemental regulation 5 C.F.R. § 3501.103.

In addition to a copy of my ethics agreement, I have attached a list of my current recusals under the Ethics Pledge and 5 C.F.R. § 2635.502. This list will be updated as necessary. Additionally, to facilitate the implementation of best ethics practices, I have included a document entitled "Guidance for Recusal Analysis" to assist in screening matters before the Department to determine whether they are subject to my recusal requirements.

Particular matters involving specific parties, in which an entity included in my list of current recusals is a party or represents a party, are not to be referred to me and are to be resolved without my participation. Such matters include, but are not limited to, litigation, permits, grants, licenses, and agreements. Anyone having a question about my recusal agreement should bring the matter to the attention of Assistant Deputy Secretary Willens for a determination. In order to help ensure that I do not inadvertently participate in matters from which I should be recused, he will seek the assistance of an agency ethics official as appropriate. Matters from which I am recused will be appropriately delegated for handling. If you have any questions, please be reminded that ethics advice must come from the DAEO or designee acting on the DAEO's behalf, as only a designated ethics official can make ethics determinations on which Department employees may authoritatively rely for safe harbor.

In consultation with an agency ethics official, I will revise and update this memorandum whenever that is warranted by changed circumstances. In the event of any changes to this screening arrangement, I will provide you a copy of the revised screening arrangement memorandum.

Attachments

May 1, 2017

Melinda Loftin
Designated Agency Ethics Official
and Director, Ethics Office
U.S. Department of the Interior
1849 C Street, NW, MS 7346
Washington, DC 20240

Dear Ms. Loftin:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Secretary of the Department of the Interior.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will withdraw from the partnership of Brownstein Hyatt Farber and Schreck, LLP, and all related entities. Pursuant to the 2012 Equityholders Agreement of Brownstein Hyatt Farber and Schreck, LLP, and BHFS-E PC, I will receive a *pro rata* partnership distribution based on the value of my partnership interests for services performed in 2017 through the date of my withdrawal. This payment will be based solely on the firm's earnings through the date of my withdrawal from the partnership. I currently have a capital account with the firm. If the firm will not refund the account before I enter into Federal service, I will forfeit the account. For a period of one year after my withdrawal, I also will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

My term with the Virginia Board of Game and Inland Fisheries has expired and I have resigned from my position with the Center for Environmental Science Accuracy and Reliability. For a period of one year after termination of my position with each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in

which I know that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will divest my interest in the T. Rowe Price Virginia Tax-Free Bond Fund, within 90 days of my confirmation. Until I have completed this divestiture, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of any holding of the T. Rowe Price Virginia Tax-Free Bond Fund that is invested in the Virginia municipal bonds sector, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets.

If I am confirmed as Deputy Secretary of the Department of the Interior, I am aware that I am prohibited by 30 U.S.C. § 1211(f) from holding a financial interest in any surface or underground coal mining operation. Additionally, I am aware that my position is subject to the prohibitions against holding any financial interest in federal lands or resources administered or controlled by the Department of the Interior extended to me by supplemental regulation 5 C.F.R. § 3501.103.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Deputy Secretary in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

David L. Bernhardt

David Bernhardt

List of Recusals[1]

1. Ethics Pledge Recusals

Until August 3, 2019, absent a waiver under Section 3 of Executive Order No. 13770, I am recused from particular matters involving specific parties in which any of the following entities either is a party or represents a party to the matter. Such matters include, but are not limited to, litigation, permits, grants, licenses, applications, and agreements. For the purposes of the Ethics Pledge, this also prohibits my participation in any meeting or other communication with these entities unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

Active Network LLC

BHFS-E PC

Brownstein Hyatt Farber and Schreck, LLP

Cadiz, Inc.

Center for Environmental Science Accuracy and Reliability (CESAR)

Cobalt International Energy

Eni Petroleum, North America

Halliburton Energy Services, LLC

Hudbay

Independent Petroleum Association of America (IPAA)

Klees, Don (individual)

National Ocean Industry Association (NOIA)

Noble Energy Company LLC

NRG Energy Inc.

Rosemont Copper Company

[1] Note that the scopes of the recusal requirements for the Ethics Pledge and 5 C.F.R. § 2635.502 are not the same. Accordingly, the lists of recusals for the Ethics Pledge and 5 C.F.R. § 2635.502 are not identical.

August 15, 2017

Sempra Energy

Statoil Gulf Services LLC

Statoil Wind LLC

Targa Resources Company LLC

Taylor Energy Company LLC

UBE PC

U.S. Oil and Gas Association

2. 5 C.F.R. § 2635.502 Recusals

Until the date indicated for the specific entity, unless first authorized to participate by the DAEO under 5 C.F.R. § 2635.502(d), I am recused from particular matters involving specific parties in which any of the following entities either is a party or represents a party to the matter. For the purposes of 5 C.F.R. § 2635.502, such matters include, but are not limited to, litigation, permits, grants, licenses, applications, and agreements.

Active Network LLC	8-1-18
BHFS-E PC	8-1-18
Brownstein Hyatt Farber and Schreck, LLP	8-1-18
Cadiz, Inc.	5-1-18
Center for Environmental Science Accuracy and Reliability (CESAR)	3-24-18
Cobalt International Energy	8-1-18
Eni Petroleum, North America	8-1-18
Forest County Potawatomi *Community*	3-1-18
Garrison Diversion Irrigation District	8-1-18
Halliburton Energy Services, LLC	7-29-18
Hudbay	8-1-18

Klees, Don (individual)	8-1-18
National Ocean Industry Association (NOIA)	7-29-18
Noble Energy Company LLC	12-1-17
NRG Energy Inc.	8-1-18
Rosemont Copper Company	8-1-18
Santa Ynez River Water Conservation District, Improvement District No. 1	11-1-17
Sempra Energy	4-1-18
Statoil Gulf Services LLC	8-1-18
Statoil Wind LLC	8-1-18
Targa Resources Company LLC	8-1-18
Taylor Energy Company LLC	7-29-18
UBE PC	8-1-18
U.S. Oil and Gas Association	7-29-18
Westlands Water District	8-1-18

Guidance for Recusal Analysis

In his ethics agreement, the Deputy Secretary agreed that, for one year after his withdrawal from his firm, he would not participate personally and substantially in any particular matter involving specific parties in which he knows his former firm is or represents a party, unless authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). He also agreed not to participate personally and substantially in any particular matter involving specific parties in which he knows a former client of his is or represents a party for a period of one year after he last provided service to that client, unless he is first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)." In addition, per the Ethics Pledge, the Deputy Secretary agreed that he will not for a period of two years from the date of his appointment participate in any particular matter involving specific parties in which a former employer or client of his is or represents a party, if he served that former employer or client during the two years prior to his appointment, absent a waiver under Section 3 of Executive Order No. 13770. This includes recusal from any meeting or other communication with such a former employer or client unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed

To assist the Deputy Secretary in complying with his ethics agreement and the Ethics Pledge, sufficient information needs to be secured before the Deputy Secretary participates in a matter to determine whether the matter meets the criteria described above.

To determine whether the Deputy Secretary may participate in a given matter, we must first determine whether that "matter" is a broad policy directed to the interests of a large and diverse group of persons or one of the two types of "particular matters" – a "particular matter of general applicability" or a "particular matter involving specific parties."

In the context of the ethics rules, the unmodified term "matter" refers to virtually all Government work. It includes the consideration of broad policy options that are directed to the interests of a large and diverse group of persons. For instance, health and safety regulations applicable to all employers or a legislative proposal for tax reform. It also includes more narrowly defined "particular matters."

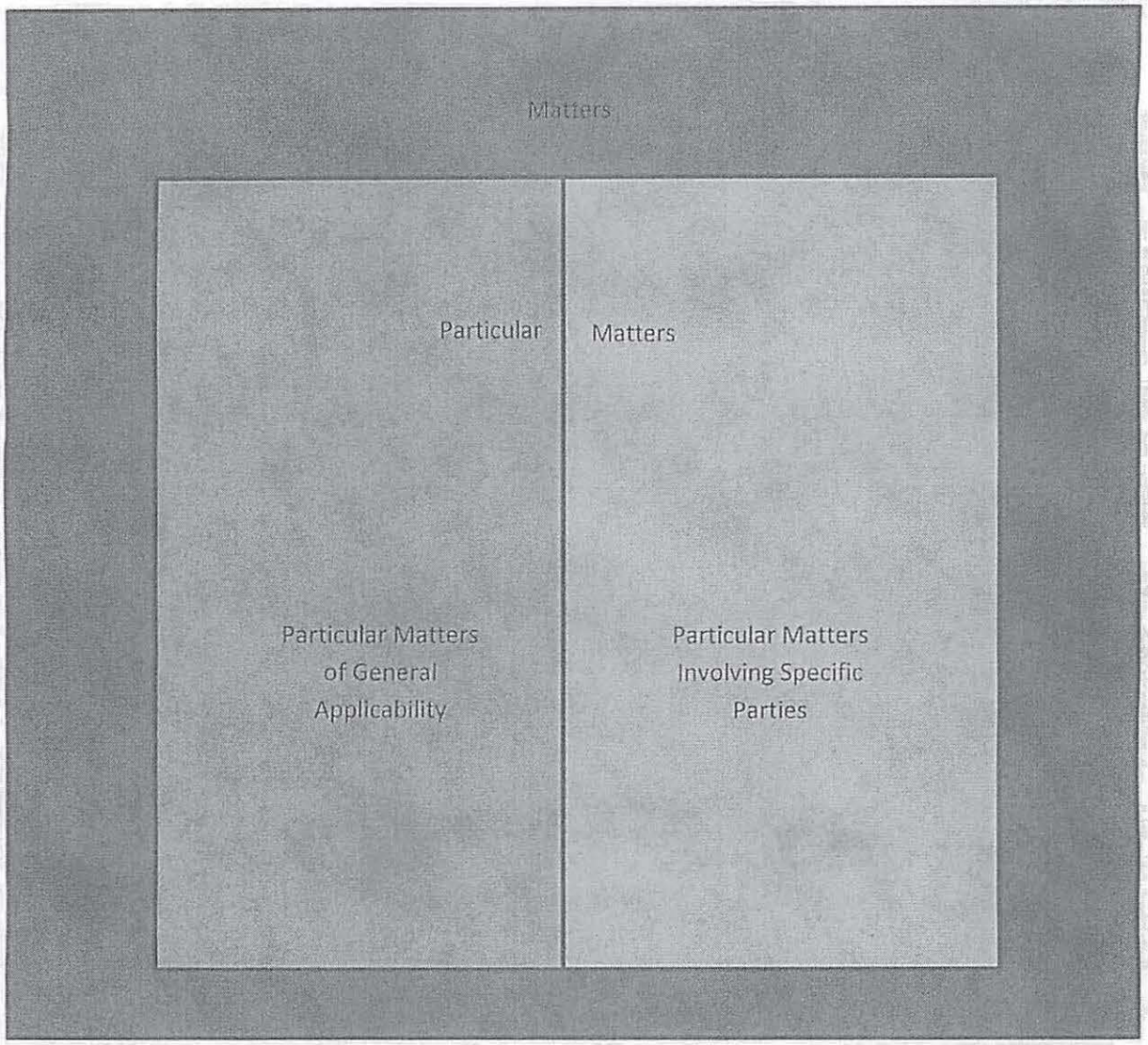
The term "particular matter" means any matter that involves deliberation, decision, or action that is focused on the interests of (1) specific persons or (2) a discrete and identifiable class of persons. These two types of particular matters are defined separately as "particular matters involving specific parties" and "particular matters of general applicability." (See attached diagram.)

A "particular matter involving specific parties" typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties." Examples include contracts, grants, licenses, investigations, litigation, and partnership agreements. This is the narrowest type of matter.

A "particular matter of general applicability" does not involve specific parties but at least focuses on the interests of a discrete and identifiable class, such as a particular industry or profession. Examples include rulemaking, legislation, or policy-making of general applicability that affect a particular industry or profession. For instance, a regulation prescribing safety standards for operators of oil rigs in the Gulf of Mexico or a regulation applicable to all those who have grazing permits on DOI public lands. On the other hand, a land use plan covering a large geographic area and affecting a number of industries (*e.g.*, agriculture; grazing; mining; timber; recreation; wind, solar, and/or geothermal power generation; etc.) would not constitute a "particular matter of general applicability" but, rather, would still fall within the broader definition of "matter," as it constitutes a broad policy directed to the interests of a large and diverse group of persons.

To assist the Deputy Secretary in complying with his ethics recusal requirements, one must gather sufficient information regarding a matter before the Department to determine whether the matter constitutes a particular matter involving specific parties, a particular matter of general applicability, or falls into the category of broad policy options that are directed to the interests of a large and diverse group of persons. In the event that a determination is made that the matter before the Department constitutes the narrowest type of matter, a particular matter involving specific parties, one must then reference the Deputy Secretary's List of Recusals to determine whether he is recused from participating in that matter.

Attachment


Matters
Particular
Matters
Particular Matters
of General
Applicability
Particular Matters
Involving Specific
Parties

OFFICE OF GOVERNMENT ETHICS

01 x 8

Letter to a Designated Agency Ethics Official dated August 23, 2001

This is in response to your letter of July 24, 2001. In your letter, you ask whether certain conduct by an attorney in your agency "created a situation in which her impartiality could be questioned" and whether she should have disqualified herself from certain particular matters or sought an authorization to participate, pursuant to 5 C.F.R. § 2635.502. We note that the attorney involved in this inquiry also wrote to us subsequently to express her views concerning certain aspects of your letter, and our response herein addresses certain issues raised in her letter of July 30, 2001.

According to your letter, the attorney at your agency participated in certain [Government] cases while she had a romantic relationship with a person who was a witness in the cases. This witness also was an employee of the respondent in the cases and held an officer position in the [organization] that filed the charges. All the cases now are closed. You state that the attorney never disclosed her relationship to your agency until it was discovered during an investigation by your [agency's] Office of the Inspector General (OIG). This investigation is ongoing, and the OIG is considering whether to refer this matter to state bar authorities. Furthermore, your agency is considering whether to inform the parties to the cases about the relationship, and you also indicate that certain agency decisions about "disciplinary action" have been deferred pending completion of the OIG investigation.

As you know, section 2635.502 requires employees to disqualify themselves from certain particular matters where there has been a determination that a reasonable person with knowledge of the facts would question the employee's impartiality. The obligation to recuse --or to seek an authorization from the agency to participate-- pertains to particular matters involving specific parties in which a member of the employee's household has a financial interest or in which someone with whom the employee has a "covered relationship" is a party or represents a party.

With respect to the present matter, you acknowledge that the individual with whom the employee had a romantic relationship was not

a member of the employee's household and that the employee did not otherwise have a "covered relationship" with the individual, within the meaning of section 2635.502(b)(1).[1] In this connection, we note that the Office of Government Ethics (OGE) specifically declined to expand the definition of "covered relationship" to include someone with whom the employee has a "close personal friendship," such as a "boyfriend" or "girlfriend." 57 *Fed. Reg.* 35006, 35026 (August 7, 1992).[2] Therefore, even if it were now determined, in hindsight, that a reasonable person with knowledge of the circumstances would have questioned the attorney's impartiality, we cannot say that she violated the impartiality rule.

The impartiality rule does provide a process, however, whereby employees may resolve any impartiality questions they may have about circumstances that do not involve a covered relationship or the interests of a member of their household. Section 2625.502(a)(2) states that "[a]n employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter." Moreover, when the rule was first promulgated, OGE specifically indicated that the circumstances addressed by this provision "could well include an employee's assignment to a particular matter to which a boyfriend, girlfriend, or other close friend is a party." *57 Fed. Reg.* at 35026.

In this case, of course, the employee did not seek assistance from an agency designee pursuant to section 2636.502 (a)(2). It is not clear whether she declined to do so because she had actually determined that a reasonable person would not question her

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[1]We have no reason to question your factual conclusion or the assertion of the attorney herself that the individual with whom she has a personal relationship is not a member of her household. Under certain circumstances, of course, a person with whom an employee has a personal relationship very well could be deemed a member of the employee's household, for example, if they shared a residence. Moreover, an employee could have a covered relationship with a personal friend if they had a "business, contractual or other financial relationship," such as co-ownership of certain property. 5 C.F.R. § 2635.502(b)(1)(i).

[2]We note that the attorney at issue in this matter argues that the individual with whom she had the personal relationship was not a "party" to the cases. In view of our resolution of your question on other grounds, it is not necessary for us to decide whether, on the basis of all the relevant facts, the individual was a party or the representative of a party, within the meaning of section 2635.502. We would say, however, that OGE historically has not taken a narrow or strictly legal view of what it means to be a party to a particular matter under section 2635.502.

impartiality.[3] In any event, OGE has consistently maintained that, although employees are encouraged to use the process provided by section 2635.502(a)(2), "[t]he election not to use that process cannot appropriately be considered to be an ethical lapse." OGE Informal Advisory Letter 94 x 10(2); *see also* OGE 97 x 8 ("obligation" to follow process where covered relationships involved, but employees "encouraged" to use process in other circumstances); OGE 95 x 5 ("not required by 5 C.F.R. 2635.502 to use the process described in that section" where no covered relationship with person who is party or represents party); OGE 94 x 10(1)(employee may "elect" to use process in section 2635.502(a)(2), but "election not to use that process should not be characterized, however, as an 'ethical lapse'").

As we have noted in the past, we "recognize that some might find section 2635.502 of our Standards of Conduct troubling as applied in an individual case." OGE 97 x 8. On the other hand, only recently this Office was asked to explain to a Congressional committee why section 2635.502 was not *unreasonably strict*. Ultimately, OGE remains committed to the goal of maintaining reasonable and objective standards of employee conduct, which can provide "clear notice of the rules" and limit the potentially overbroad or "overzealous application of ethical principles." OGE Informal Advisory Letter 97x 12.

Finally, the attorney involved in this matter has asked that we address in our advisory letter "whether the remedial actions proposed by the Agency, notifying the parties to the litigation and reporting

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[3]As OGE has indicated on another occasion with respect to section 2635.502(a)(2): "When considering whether there would be any question regarding the impartiality of [an employee's] participation in a particular matter, the employee may seek assistance from his supervisor, an agency ethics official, or the person specifically designated by his agency to address appearance concerns ('agency designee'). Because the relevant facts will vary in each situation, the Office of Government Ethics (OGE) depends on the employee's agency to provide whatever assistance the employee needs in this regard; OGE is not able to decide for an employee or an employee's agency whether a reasonable person would question the impartiality of the employee's participation in any given particular matter." OGE Informal Advisory Letter 95 x 5.

this matter to State bar authorities, are warranted in the present situation." OGE has neither the expertise nor the authority to judge appropriateness or necessity of these possible agency responses, inasmuch as they relate primarily to duties and responsibilities under relevant state bar rules and other authorities beyond the scope of the Federal ethics rules and statutes.

We hope this has been helpful.

Sincerely,

Marilyn L. Glynn
General Counsel

- You said to talk to you
- General Principles
    - (7) Employees shall not use public office for private gain.
    - (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.
    - (9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
    - (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.
- 5 CFR 2635.702 Use of public office for private gain.
    - An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.
        - **(a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.**

57 FR 35006-01, 1992 WL 187981(F.R.)
RULES and REGULATIONS
OFFICE OF GOVERNMENT ETHICS
5 CFR Part 2635
RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch

Friday, August 7, 1992

***35006** AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule which establishes uniform standards of ethical conduct for officers and employees of the executive branch of the Federal Government (hereinafter Government). When effective in 180 days, part 2635 will supersede most of subparts A, B and C of 5 CFR part 735 and agency regulations thereunder, as well as 5 CFR 2635.101 of the Office of Government Ethics regulations.

The final rule establishes standards relating to the receipt of gifts, whether from prohibited sources, because of official position, or between employees. It establishes standards for dealing with the employee's own and other financial interests that conflict with an employee's official duties. These include disqualification requirements that apply when a matter to which the employee is assigned affects a person with whom he or she is seeking employment. In addition to standards relating to use of official position and time, Government property and nonpublic information, it establishes specific standards for application to outside activities in which an employee may participate, including fundraising and outside employment.

EFFECTIVE DATE: February 3, 1993.

Subpart G—Misuse of Position

Section 2635.702 Use of Public Office for Private Gain

One agency recommended that the first sentence of § 2635.702 be rephrased to state that an employee may not use public office for his or her own private gain “or for the private gain of anyone else.” This recommendation was not adopted. The section is based on the general principle stated in Executive Order 12674 that “employees shall not use public office for private gain.” That principle is one of long standing and consistently has been interpreted as prohibiting an employee's use of public office for the gain of persons other than himself or herself. The recommended language, however, is overly broad and could be construed as prohibiting employees from energetically and properly assisting citizens they know only because they have contacted the employee's agency. It would raise repeated questions about individual employee actions that have less to do with individual conduct than with how agency programs are carried out. Issues relating to an individual employee's use of public office for private gain tend to arise when the employee's actions benefit those with whom the employee has a relationship outside the office and the language of § 2635.702 is intended to pinpoint this conduct without unreasonably limiting employees in the performance of their official duties. However, a reference to the prohibition on endorsements has been added to § 2635.702 based on the observation by one agency that this particular prohibition, spelled out more specifically in § 2635.702(c), is not limited to endorsements on behalf of friends, relatives or affiliated persons.

One agency stated that the regulations should include standards to prohibit an employee from participating in his or her official capacity as a speaker in a “for-profit” conference unless it has been determined that the employee's participation is in the interest of the agency. The question of whether an agency should assign an employee to speak at a for-profit, privately sponsored conference is one that the agency must address considering such factors as the agency's mission, whether the conference is an appropriate forum in which to disseminate the information, whether agency participation is necessary to provide balance and perspective, the reasonableness of the conference fees charged and the availability of the employee's time and funding for any travel involved. These

are considerations that relate to how an agency runs its program or otherwise carries out its mission and not considerations that should be included in a regulation that deals with the individual conduct of the employee assigned as a speaker.

Two agencies and one organization suggested that, in the absence of coercion, § 2635.702(a) should only prohibit an employee from using his or her official position, title or authority in a manner intended to "improperly" induce another to provide a benefit to himself or herself or to other persons specified. The word "improperly" has not been inserted because it would suggest that there are ways in which an employee may properly invoke his or her official title, position or authority specifically to induce another person to provide a benefit to the employee or to another person with whom he or she has a relationship as specified. As stated, the prohibition does not preclude an employee from using his or her official title or position as necessary for identification purposes. The prohibition is on use of official title, position or authority "in a manner intended to coerce or induce" another person to provide a benefit.

One agency recommended that the definition of the term "relative" used in § 2635.702(a) be limited to an employee's parent, spouse or child. This recommendation was not adopted. The term "relative," like the term "friend," is intended to have an expansive rather ***35031*** than a narrow interpretation in the context of this section. Another agency commented on Example 2 accompanying § 2635.702(a) and suggested that it might be part of the employee's official duties in that example to request expeditious processing of the friend's export license. We believe the facts as stated make it clear that the employee is in a different office and does not have responsibility in the matter. Moreover, an employee should not use his or her official authority to induce special treatment of a friend's application.

Three agencies and one organization that commented on § 2635.702(b) objected to any restriction on the use of official title in conjunction with an employee's signature on any letter of recommendation for any person. One expressed the view that use of an employee's official title in a letter of recommendation is not generally construed to imply agency endorsement of the person who is the subject of the recommendation. Another stated that it is customary for a person giving a recommendation to identify himself or herself professionally and even suggested that it would be appropriate for an employee to use official stationery to write a letter of recommendation for any personal friend. Three believed that it was inconsistent to preclude an employee's use of official stationery and official title to write a letter of recommendation for a personal friend but, as indicated in Example 1 accompanying § 2635.702(b), to permit reference to the employee's official position in the body of the letter.

Notwithstanding these comments, OGE has made no change to § 2635.702(b). Official stationery is to be used for official purposes. Where the employee has not dealt with the person in the course of Federal employment, no official purpose is served by a letter recommending that individual other than for Federal employment. We recognize that letters of recommendation frequently include some indication of the job or profession of the person making the recommendation. It is for this reason that Example 1 states that, when writing a letter of recommendation that cannot be signed using one's official title, it may be appropriate, nevertheless, for an employee to include some reference to his or her official position in the body of the letter. We do not agree that custom can be served only if employees are permitted to sign letters of recommendation for personal friends using their official titles. It is not customary for employees to sign other personal letters using their official titles. And, it would not be unreasonable for the recipient of a letter of recommendation signed by a high-level official, such as a Cabinet Secretary, to construe that letter as conveying some official endorsement of the individual who is the subject of the recommendation. Section 2635.702(b) is an attempt to balance custom and necessity with the prohibition against use of public office for private gain.

Two agencies expressed concern that the prohibition in § 2635.702(c) on use of official position, title or authority to endorse products and services not be interpreted to bar agencies from recognizing certain contributions and efforts that promote their missions. They point out that recognition of this type is not given for the purpose of endorsement even though it ultimately may by used by the recipient for a commercial purpose. Section 2635.702(c) has been revised to address this concern and a new Example 3 has been substituted for proposed Example 3, to which two commenters had

objected. At the request of one agency and one organization we have added a new Example 4 to illustrate application of § 2635.702(c) to an employee who has been asked to write a book review or a book jacket endorsement. We did not adopt another recommendation by that agency and organization to append the word “person” to the listing at § 2635.702(c) of any “product, service or enterprise.” This suggestion would unduly extend the essentially commercial reach of the proscription.

Four agencies noted that the phrase “significant relationships” used in proposed § 2635.702(d) is not defined. To comport with the introductory language of § 2635.702 and the parallel language of § 2635.702 (a) and (b), the phrase “certain persons with whom he has a significant relationship” has been changed to “a friend, relative or person with whom he is affiliated in a nongovernmental capacity.” While the procedures in § 2635.502 apply, by their terms, only when the relationship is a “covered relationship” as defined in § 2635.502(b)(1), § 2635.502(a)(2) encourages employees to use the process described in the section to address other circumstances that raise questions about their impartiality.

Section 2635.704 Use of Government Property

One agency and one individual suggested that the regulations be expanded to address the use of Government vehicles. No change has been made since “Government property” is specifically defined at § 2635.704(b)(1) to include Government vehicles. More detailed guidance is not provided since there are statutes, as well as General Services Administration and agency regulations, governing use of Government vehicles. Nor have we revised this section, as recommended by two agencies, to include specific prohibitions against gambling and use of alcoholic beverages and drugs on Government property. These matters are covered by the regulations of other agencies. See e.g., 41 CFR 101-20.306 and 101-20.307. The Office of Personnel Management also intends to reissue the constraint against gambling in 5 CFR part 735.

One agency and two organizations noted that § 2635.704(b)(2), as proposed, failed to take into account the fact that many Federal facilities, such as libraries, are open to the public and that employees may use them to the same extent as other members of the public. Accordingly, OGE has expanded the definition of “authorized purposes” at § 2635.704(b)(2) to encompass those “for which Government property is made available to members of the public.”

A number of organizations and several individuals suggested that § 2635.704(b)(2) is unnecessarily restrictive in limiting authorized purposes to those authorized by law or regulation for the performance of official duty. One commenter cited the practice at certain military bases of making Government facilities available for meetings by Boy Scout troops whose members are military dependents. Several suggested language specifically permitting use of Government resources to support the activities of professional associations. The Office of Government Ethics has retained the requirement that Government property be used only for purposes authorized by law or regulation and has not incorporated a specific exception for the support of professional associations. However, we have revised § 2635.704(b)(2) to make it clear that authorized purposes may be purposes that do not strictly relate to the performance of official duties and we have deleted the second sentence of that section, as proposed.

With the revisions discussed above, we believe § 2635.704(b)(2) appropriately accommodates the purposes about which these commenters have raised questions. For example, authority can be found in regulations, such as 41 CFR 101-20.4, to allow outside organizations to occasionally use public buildings for certain purposes. And, guidance in chapter 250 of the Federal Personnel Manual provides that agencies may grant professional associations privileges, such as the use of agency facilities for meetings. Use of agency facilities under these circumstances would be for authorized purposes, even though not specifically related to performance of an employee's official duties. We have added Example 3 following § 2635.704(b)(2) to clarify that the concept of authorized purposes is broad enough to accommodate concerns expressed by several organizations that this section

would contract the authority agencies now have to permit use of Government property. Our specific purpose in revising § 2635.704(b)(2) was to ensure that these regulations not interfere with those authorities.

One agency and several organizations suggested that the definition of authorized purposes be expanded to include any purpose authorized by an employee's supervisor. This change has not been made as it would suggest that supervisors have inherent authority to authorize the use of Government property for any purpose. To the extent that a supervisor is exercising authority that derives from a statute, Executive order or a regulation authorizing the use of Government property for certain purposes, including an agency regulation, those purposes would meet the definition at § 2635.704(b)(2). Contrary to the suggestion by these and several other commenters, OGE does not have authority to promulgate regulations that expand upon authorities regarding use of Government property contained in General Services Administration or other regulations. Our authority is limited to implementing the principle of conduct stated in the Executive order that “Employees shall protect and conserve Federal property and shall not use it for other than authorized purposes.” In § 2635.704(b)(2), we have undertaken only to define what is meant by “authorized purposes.” The revision made to Example 1 following § 2635.704(b)(2) was made only to reflect a recent change in regulations issued by the General Services Administration.

Four agencies commented on the language in proposed § 2635.704(b)(2)(i) and (ii). The Office of Government Ethics has not adopted their recommendation to define the phrase “professional development” used therein. Instead, we have deleted both paragraphs as inappropriate for inclusion in regulations issued by OGE. As indicated above, nothing in Executive Order 12674 or in any statute gives OGE authority to issue regulations specifically authorizing use of Government property for any purpose. Such regulations are the province of other agencies. We had included § 2635.704(b)(2) (i) and (ii) in the proposed rule in an effort to capsulize our understanding of existing guidance issued by other agencies regarding use of agency resources for training and other professional development. We have deleted both paragraphs out of concern that they may not accurately reflect regulations and policies in all agencies and to avoid any suggestion that OGE has authority to create exceptions permitting the use of Government property in circumstances otherwise falling within the general prohibition set forth in Executive Order 12674. For this reason, OGE has rejected informal recommendations to create an exception permitting de minimis personal use of agency photocopy equipment.

DB phone call

Tues

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6/12/15

(b) (5)

[redacted]

(b) (5)

[redacted]


(b) (5)

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Conversation Contents

Proposed Revisions to Certain Regulations Implementing the Endangered Species Act

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Jul 16 2018 09:57:53 GMT-0600 (MDT)
To:	"Bernhardt, David" (b) (6) t@ios.doi.gov>
CC:	Scott De La Vega <scott.delavega@sol.doi.gov>
Subject:	Proposed Revisions to Certain Regulations Implementing the Endangered Species Act

Hi David,

You have asked whether you may participate in the rulemaking process for the following rules:

RIN 1018-BC87; 0648-BH41 -- Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation

RIN 1018-BC97 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants

RIN 1018-BC88; 0648-BH42 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat

I have reviewed these proposed rules and determined that they constitute broad policy options directed to the interests of a large and diverse group and do not constitute either particular matters of general applicability or particular matters involving a specific party or parties. Accordingly, they are not subject to the restrictions of either paragraph 6 of the administration ethics pledge (Executive Order 13770) or 5 CFR 2635.502(b)(iv) (as implemented in your ethics agreement). You may, therefore, participate in the rulemaking process for these rules.

Please let me know if you have any questions or would care to discuss.

Thank you,
Ed

- Stewardship for America with Integrity and Excellence -

--- Please note that a current or former employee who discloses information to an agency ethics official or a

Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

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Scott de la Vega <scott.delavega@sol.doi.gov>

From:	Scott de la Vega <scott.delavega@sol.doi.gov>
Sent:	Mon Jul 16 2018 11:40:56 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
CC:	heather.gottry@sol.doi.gov
Subject:	Re: Proposed Revisions to Certain Regulations Implementing the Endangered Species Act

Thank you for handling this Ed.

Sent from my iPhone

On Jul 16, 2018, at 11:57 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

Hi David,

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RIN 1018-BC97 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants

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Please let me know if you have any questions or would care to discuss.

Thank you,
Ed

- Stewardship for America with Integrity and Excellence -

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Ed McDonnell

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Jul 16 2018 11:43:26 GMT-0600 (MDT)
To:	Scott de la Vega <scott.delavega@sol.doi.gov>
Subject:	Re: Proposed Revisions to Certain Regulations Implementing the Endangered Species Act

You're very welcome, Scott!

- Stewardship for America with Integrity and Excellence -

--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

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Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Mon, Jul 16, 2018 at 1:40 PM, Scott de la Vega <scott.delavega@sol.doi.gov> wrote:

> Thank you for handling this Ed.
>
> Sent from my iPhone
>
> On Jul 16, 2018, at 11:57 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:
>
> Hi David,
>
> You have asked whether you may participate in the rulemaking process for the following rules:
>
> RIN 1018-BC87; 0648-BH41 -- Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation
>
> RIN 1018-BC97 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants
>
> RIN 1018-BC88; 0648-BH42 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat
>
> I have reviewed these proposed rules and determined that they constitute broad policy options directed to the interests of a large and diverse group and do not constitute either particular matters of general applicability or particular matters involving a specific party or parties. Accordingly, they are not subject to the restrictions of either paragraph 6 of the administration ethics pledge (Executive Order 13770) or 5 CFR 2635.502(b)(iv) (as implemented in your ethics agreement). You may, therefore, participate in the rulemaking process for these rules.
>
> Please let me know if you have any questions or would care to discuss.
>
> Thank you,
> Ed

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Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Ce (b) (6) [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Mailing Address:
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Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent: Mon Jul 16 2018 13:01:36 GMT-0600 (MDT)
"Hintz, Kimberly" <kimberly.hintz@sol.doi.gov>, Matthew Parsons

To: <matthew.parsons@sol.doi.gov>

Subject: Fwd: Proposed Revisions to Certain Regulations Implementing the Endangered Species Act

FYI

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---------- Forwarded message ----------
From: **McDonnell, Edward** <edward.mcdonnell@sol.doi.gov>
Date: Mon, Jul 16, 2018 at 11:57 AM
Subject: Proposed Revisions to Certain Regulations Implementing the Endangered Species Act
To: "Bernhardt, David (b) (6) [redacted]@ios.doi.gov>
Cc: Scott De La Vega <scott.delavega@sol.doi.gov>

Hi David,

You have asked whether you may participate in the rulemaking process for the following rules:

RIN 1018-BC87; 0648-BH41 -- Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation

RIN 1018-BC97 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants

RIN 1018-BC88; 0648-BH42 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat

I have reviewed these proposed rules and determined that they constitute broad policy options directed to the interests of a large and diverse group and do not constitute either particular matters of general applicability or particular matters involving a specific party or parties. Accordingly, they are not subject to the restrictions of either paragraph 6 of the administration ethics pledge (Executive Order 13770) or 5 CFR 2635.502(b)(iv) (as implemented in your ethics agreement). You may, therefore, participate in the rulemaking process for these rules.

Please let me know if you have any questions or would care to discuss.

Thank you,
Ed

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David Bernhard (b) (6) @ios.doi.gov>

From:	David Bernhardt (b) (6) @ios.doi.gov>
Sent:	Mon Jul 16 2018 18:19:16 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
CC:	Scott De La Vega <scott.delavega@sol.doi.gov>
Subject:	Re: Proposed Revisions to Certain Regulations Implementing the Endangered Species Act

Ed: Thanks for the confirmation.

David

Sent from my iPhone

On Jul 16, 2018, at 11:57 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

> Hi David,
>
> You have asked whether you may participate in the rulemaking process for the following rules:
>
> RIN 1018-BC87; 0648-BH41 -- Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation
>
> RIN 1018-BC97 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants
>
> RIN 1018-BC88; 0648-BH42 -- Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat
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Please let me know if you have any questions or would care to discuss.

Thank you,
Ed

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Tue Jul 17 2018 05:56:02 GMT-0600 (MDT)
To:	David Bernhard (b) (6) t@ios.doi.gov>
CC:	Scott De La Vega <scott.delavega@sol.doi.gov>
Subject:	Re: Proposed Revisions to Certain Regulations Implementing the Endangered Species Act

You're very welcome, David.

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On Mon, Jul 16, 2018 at 8:19 PM, David Bernhardt (b) (6) @ios.doi.gov> wrote:
Ed: Thanks for the confirmation.

David

Sent from my iPhone

On Jul 16, 2018, at 11:57 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

Hi David,

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Ed

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Label: "SOL FOIA 2018 - 00129"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:295 (54 conversations)

Created: 08-21-2018 at 07:14 AM

Conversation Contents

Fwd: Stock Act 278T Reminder

"Barner, Tia" <tia.barner@sol.doi.gov>

From:	"Barner, Tia" <tia.barner@sol.doi.gov>
Sent:	Thu Apr 05 2018 09:09:35 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject:	Fwd: Stock Act 278T Reminder

Ed,

My apolgies. I just sent out the notice. I started typing the names of the PAS officials in the To: box and I must've gotten sidetracked and forgot to send them on Monday.

Tia Barner

Ethics Specialist

U.S. Department of the Interior

Office of the Solicitor

1849 C St., NW - MS 7346

Washington, DC 20240

(202) 208-7960

Tia.Barner@sol.doi.gov

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---------- Forwarded message ----------
From: **Barner, Tia** <tia.barner@sol.doi.gov>
Date: Thu, Apr 5, 2018 at 11:05 AM

Subject: Stock Act 278T Reminder
To: Joseph Balash <joseph_balash@ios.doi.gov>, David Bernhardt (b) (6) @ios.doi.gov>, Brenda Burman <bburman@usbr.gov>, "Chaudhuri, Jonodev O." <Jonodev_Chaudhuri@nigc.gov>, Douglas Domenech <douglas_domenech@ios.doi.gov>, Secretary Zinke (b) (6) @ios.doi.gov>, Timothy Petty <timothy_petty@ios.doi.gov>

Stock Act 278T reminder

Under the STOCK Act, employees who file a public financial disclosure report (OGE 278e) are required to periodically (not just annually) report any purchase, sale, or exchange by you, your spouse, or dependent child of stocks, bonds, commodity futures, and other securities if the amount of the transaction exceeded $1,000. You do not need to report: (1) mutual funds and other excepted investment funds; (2) certificates of deposit, savings or checking accounts, and money market accounts; (3) U.S. Treasury bills, notes, and bonds; (4) Thrift Savings Plan accounts; (5) real property; and (6) transactions that are solely by and between you, your spouse, or dependent child.

When to File

Periodic transaction reporting is subject to two different deadlines. Under the Ethics in Government Act, you need to file a report within 30 days of receiving notification of a transaction, but not later than 45 days after the transaction. Which deadline applies depends on when you receive notification of the transaction. Normally, you need to disclose a transaction within 30 days of receiving the notification.

To complete the OGE 278-T form, click on the link below to log into Integrity.gov https://integrity.gov/efeds-login/

If you have any questions about periodic transaction reporting and other STOCK Act requirements, please contact the Departmental Ethics Office at (202) 208-7960 or see the Ethics Legislation and Legal Advisories sections of OGE's web site at www.oge.gov.

Sincerely,

The Departmental Ethics Office

Tia Barner

Ethics Specialist

U.S. Department of the Interior

Office of the Solicitor

1849 C St., NW - MS 7346

Washington, DC 20240

(202) 208-7960

Tia.Barner@sol.doi.gov

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"Bernhardt, David" (b) (6) @ios.doi.gov>

From:	"Bernhardt, David (b) (6) @ios.doi.gov>
Sent:	Thu Apr 05 2018 12:36:21 GMT-0600 (MDT)
To:	Edward McDonnell <edward.mcdonnell@sol.doi.gov>
Subject:	Fwd: Stock Act 278T Reminder

Ed: Can you look at my 278 and tell me if any of my existing funds trigger the stock act. I think my entire point of getting out of certain funds was to make sure things lined up with the requirements I had. I have not made any changes to the funds, except holding them.

Thanks,
David
---------- Forwarded message ----------
From: **Barner, Tia** <tia.barner@sol.doi.gov>
Date: Thu, Apr 5, 2018 at 2:07 PM
Subject: Re: Stock Act 278T Reminder
To: "Bernhardt, David" (b) (6) @ios.doi.gov>

Sector Mutual Funds

Mutual funds that invest in particular economic or geographic sectors. Government actions often directly and predictably affect such funds. Sector funds normally do not qualify as diversified funds.

There are two exemptions that may be applied when an employee has an interest in a sector mutual fund:

* an employee may participate in a particular matter that affects holdings of a sector mutual fund as long as the holdings are not in the sector in which the fund concentrates; and
* an employee may participate in a particular matter that affects holdings of a sector mutual fund where the aggregate value of interests in any sector fund or funds does not exceed $50,000.

I hope this helps.

Tia Barner

Ethics Specialist

U.S. Department of the Interior

Office of the Solicitor

1849 C St., NW - MS 7346

Washington, DC 20240

(202) 208-7960

Tia.Barner@sol.doi.gov

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On Thu, Apr 5, 2018 at 1:46 PM, Bernhardt, Davi (b) (6) @ios.doi.gov> wrote:

> What is a sector fund, International stock, total bond, total stock, or do you mean energy, tech etc.?
>
> On Thu, Apr 5, 2018 at 1:13 PM, Barner, Tia <tia.barner@sol.doi.gov> wrote:
>
> > Diversified mutual funds are not reportable on the Transaction report. However, sector mutual funds are reportable.
> >
> > Tia Barner
> >
> > Ethics Specialist
> >
> > U.S. Department of the Interior
> >
> > Office of the Solicitor
> >
> > 1849 C St., NW - MS 7346
> >
> > Washington, DC 20240
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> > (202) 208-7960
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> > Tia.Barner@sol.doi.gov
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Visit our website at www.doi.gov/ethics.

On Thu, Apr 5, 2018 at 12:55 PM, David Bernhard (b) (6) [redacted]@ios.doi.gov> wrote:

Tia: Just be clear if there are transactions with exempted mutual funds you have nothing to report correct?

Sent from my iPhone

On Apr 5, 2018, at 11:05 AM, Barner, Tia <tia.barner@sol.doi.gov> wrote:

Stock Act 278T reminder

Under the STOCK Act, employees who file a public financial disclosure report (OGE 278e) are required to periodically (not just annually) report any purchase, sale, or exchange by you, your spouse, or dependent child of stocks, bonds, commodity futures, and other securities if the amount of the transaction exceeded $1,000. You do not need to report: (1) mutual funds and other excepted investment funds; (2) certificates of deposit, savings or checking accounts, and money market accounts; (3) U.S. Treasury bills, notes, and bonds; (4) Thrift Savings Plan accounts; (5) real property; and (6) transactions that are solely by and between you, your spouse, or dependent child.

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If you have any questions about periodic transaction reporting and other STOCK Act requirements, please contact the Departmental Ethics Office at (202) 208-7960 or see the Ethics Legislation and Legal Advisories sections of OGE's web site at www.oge.gov.

Sincerely,

The Departmental Ethics Office

Tia Barner

Ethics Specialist

U.S. Department of the Interior

Office of the Solicitor

1849 C St., NW - MS 7346

Washington, DC 20240

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Tia.Barner@sol.doi.gov

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--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Thu Apr 05 2018 12:40:30 GMT-0600 (MDT)

To: "Bernhardt, David" (b) (6) @ios.doi.gov>
Subject: Re: Stock Act 278T Reminder

Will do, David.

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

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Room 5313
Office: (202) 208-5916
Cel (b) (6)

Mailing Address:
Departmental Ethics Office
Office of the Solicitor
Department of the Interior
Mail Stop 5311
1849 C Street NW
Washington, DC 20240

E-mail the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or visit us online at www.doi.gov/ethics

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On Thu, Apr 5, 2018 at 2:36 PM, Bernhardt, David (b) (6) @ios.doi.gov> wrote:

> Ed: Can you look at my 278 and tell me if any of my existing funds trigger the stock act. I think my entire point of getting out of certain funds was to make sure things lined up with the requirements I had. I have not made any changes to the funds, except holding them.
>
> Thanks,
> David

---------- Forwarded message ----------
From: **Barner, Tia** <tia.barner@sol.doi.gov>
Date: Thu, Apr 5, 2018 at 2:07 PM
Subject: Re: Stock Act 278T Reminder
To: "Bernhardt, David" (b) (6) t@ios.doi.gov>

Sector Mutual Funds

Mutual funds that invest in particular economic or geographic sectors. Government actions often directly and predictably affect such funds. Sector funds normally do not qualify as diversified funds.

There are two exemptions that may be applied when an employee has an interest in a sector mutual fund:

* an employee may participate in a particular matter that affects holdings of a sector mutual fund as long as the holdings are not in the sector in which the fund concentrates; and
* an employee may participate in a particular matter that affects holdings of a sector mutual fund where the aggregate value of interests in any sector fund or funds does not exceed $50,000.

I hope this helps.

Tia Barner

Ethics Specialist

U.S. Department of the Interior

Office of the Solicitor

1849 C St., NW - MS 7346

Washington, DC 20240

(202) 208-7960

Tia.Barner@sol.doi.gov

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> > > Under the STOCK Act, employees who file a public financial disclosure report (OGE 278e) are required to periodically (not just annually) report any purchase, sale, or exchange by you, your spouse, or dependent child of stocks, bonds, commodity futures, and other securities if the amount of the transaction exceeded $1,000. You do not need to report: (1) mutual funds and other excepted investment funds; (2) certificates of deposit, savings or checking accounts, and money market accounts; (3) U.S. Treasury bills, notes, and bonds; (4) Thrift Savings Plan accounts; (5) real property; and (6) transactions that are solely by and between you, your

spouse, or dependent child.

When to File

Periodic transaction reporting is subject to two different deadlines. Under the Ethics in Government Act, you need to file a report within 30 days of receiving notification of a transaction, but not later than 45 days after the transaction. Which deadline applies depends on when you receive notification of the transaction. Normally, you need to disclose a transaction within 30 days of receiving the notification.

To complete the OGE 278-T form, click on the link below to log into Integrity.gov https://integrity.gov/efeds-login/

If you have any questions about periodic transaction reporting and other STOCK Act requirements, please contact the Departmental Ethics Office at (202) 208-7960 or see the Ethics Legislation and Legal Advisories sections of OGE's web site at www.oge.gov.

Sincerely,

The Departmental Ethics Office

Tia Barner

Ethics Specialist

U.S. Department of the Interior

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--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
(202) 208-6291

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"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent:	Mon Apr 09 2018 10:14:59 GMT-0600 (MDT)
To:	"Bernhardt, David (b) (6) t@ios.doi.gov>
Subject:	Re: Stock Act 278T Reminder

Hi David,

The law requires reporting of any purchase, sale, or exchange of stocks, bonds, commodities futures or other forms of securities owned by a 278e filer when the amount of the transaction exceeds $1,000. It does not require reporting of transactions of interests in excepted investment funds (EIFs).

All of your funds are EIFs and, therefore, you would not be required to report a transaction of these funds.

You also have a number of cash accounts and cash transactions are not reportable either.

You are a member of one LLC. Unless your membership resulted in a purchase, sale, or exchange of stocks, bonds, commodities futures or other form of security, this wouldn't result in a reportable transaction.

Please let me know if you have any questions or would care to discuss.

Thanks very much,
Ed

- Stewardship for America with Integrity and Excellence -

--- Please note that a current or former employee who discloses information to an agency ethics official or a Government attorney does not personally enjoy an attorney-client privilege with respect to such communications. Additionally, reliance on the oral or written advice of an agency ethics official cannot ensure that an employee will not be prosecuted for a violation of Title 18 of the United States Code. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. ---

Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

E-mail: edward.mcdonnell@sol.doi.gov
Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell: (b) (6) [redacted]

Mailing Address:
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- The only exceptions to the lobbyist gift ban

-- gifts based on a personal relationship

-- discounts and similar benefits

-- gifts resulting from a spouse's business or employment

-- customary gifts/gratuities provided by a prospective employer

-- gifts authorized by an OGE-approved agency supplemental regulation (DOI has none)

-- gifts accepted under specific statutory authority (e.g., foreign gifts act, 5 U.S.C. § 4111)

- The following are NOT exceptions to the lobbyist gift ban:

-- $20 de minimis value

-- awards and honorary degrees

-- gifts resulting from the employee's own outside business or employment

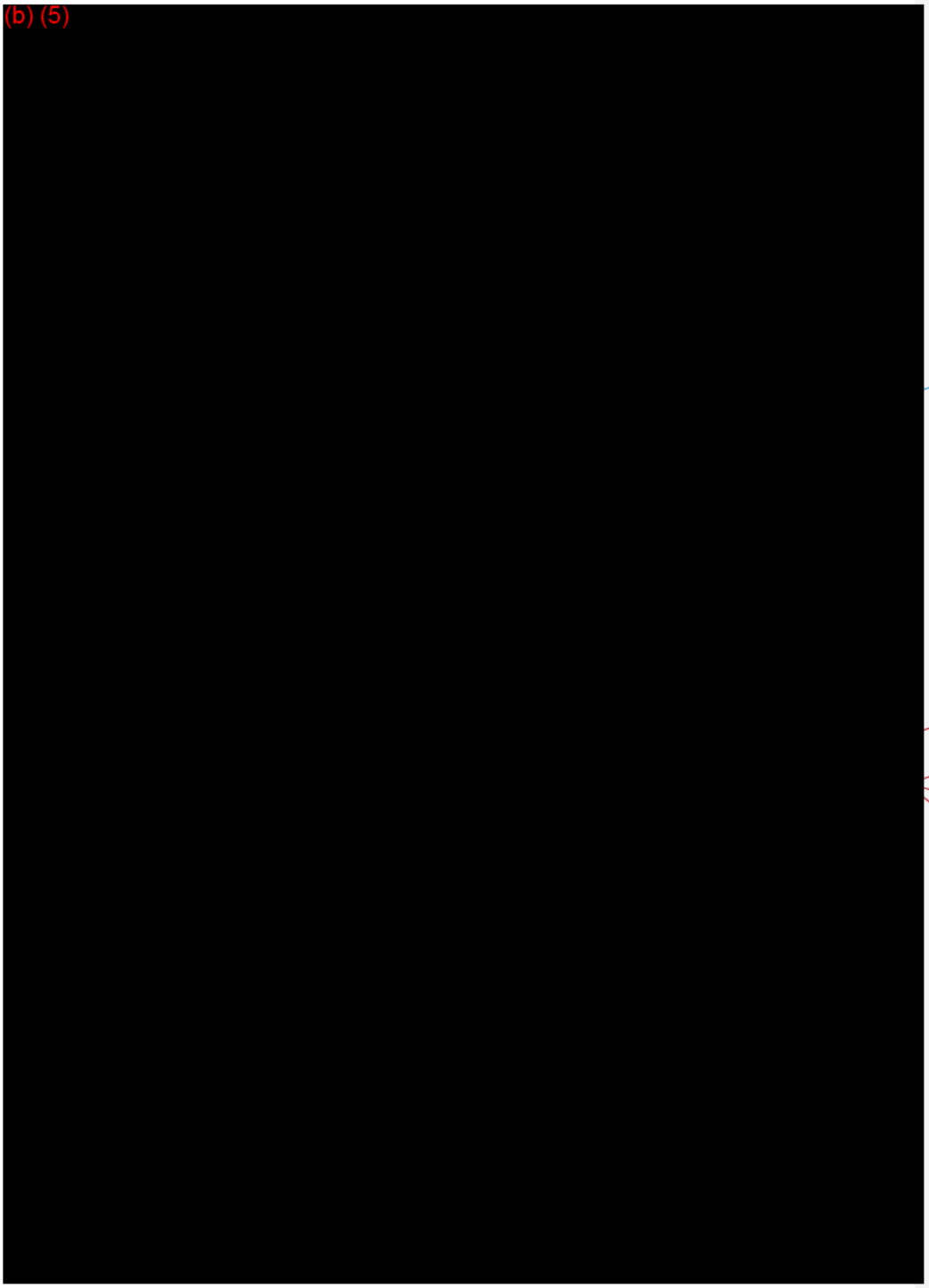
-- gifts from political organizations in connection with political participation

-- widely attended gatherings

-- social invitations from non-prohibited sources

-- food, refreshments, and entertainment from persons other than a foreign government in a foreign area

- Indirect gifts are also prohibited – parent, sibling, spouse, child, or dependent relative because of their relationship to the appointee or a gift given to any other person, including a charitable organization, based on the appointee's designation, recommendation, or other specification.





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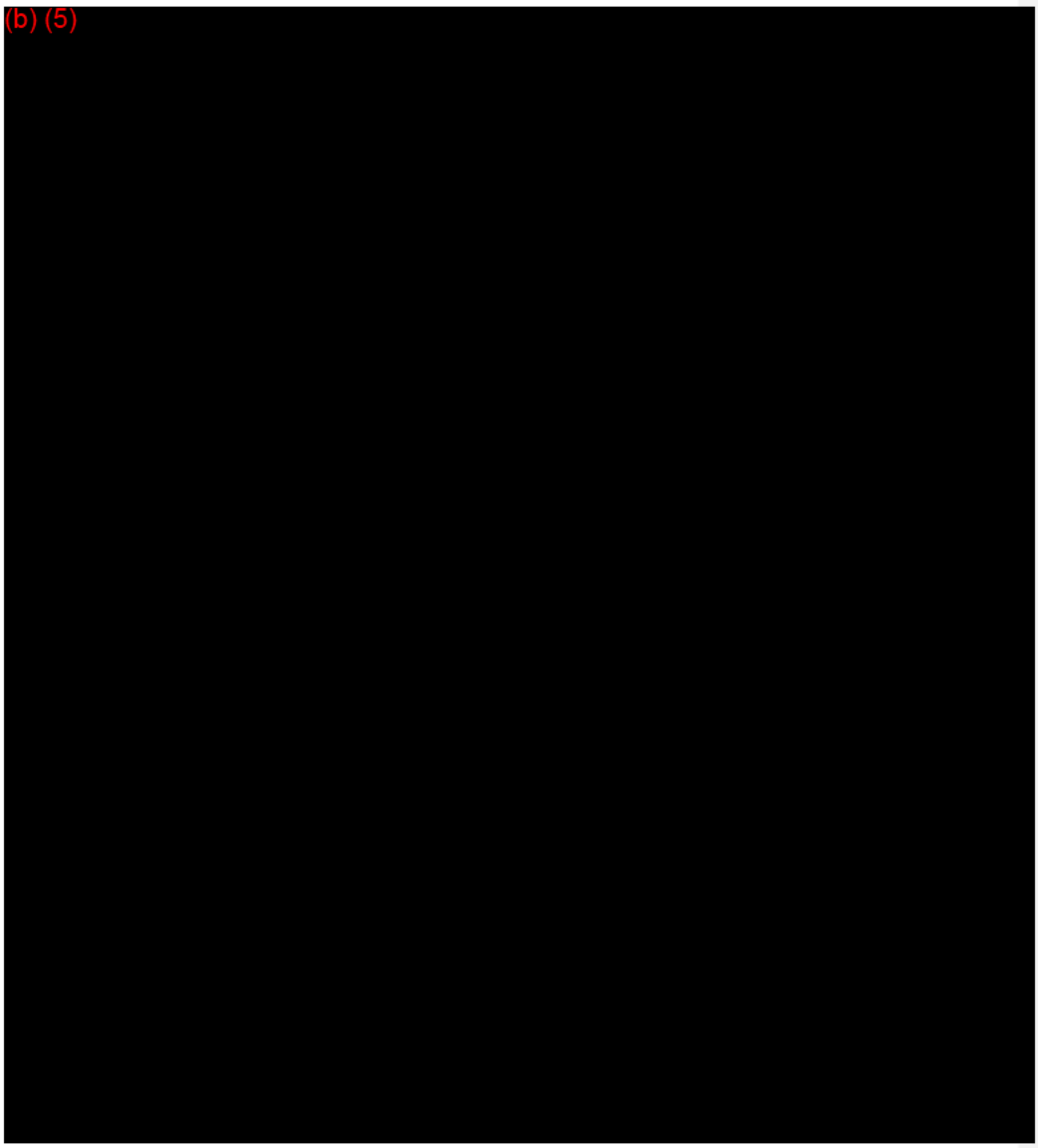
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Foia, SOL <sol.foia@sol.doi.gov>

FOE FOIA Request:

1 message

Friends of the Earth FOIA <foefoia17@gmail.com> Tue, Mar 6, 2018 at 4:35 PM
To: "Foia, SOL" <sol.foia@sol.doi.gov>

Dear Lance Purvis,

Attached is a FOIA from Friends of the Earth concerning Deputy Secretary David Bernhardt's ethics documents. If you have questions or need additional information, please contact me by email at foefoia17@gmail.com or telephone at 510-900-8061.

Thank you,

Nicole Ghio
Friends of the Earth Fossil Fuels Program Manager

FOIA Bernhardt Ethics.docx
13K

FOIA Request Form

Fields marked with an asterisk (*) are required.

Please note that the complexity of your request will affect the order in which your request is processed. For more information on multitrack processing and how it affects your request, please see section 2.15 of our regulations.

Your Contact Information:

Nicole Ghio, Fossil Fuels Program Manager
Friends of the Earth
2150 Allston Way, Suite 360
Berkeley, CA 94704
510-900-3144 (phone) 510-900-3155 (fax)
foefoia17@gmail.com

Marcie Keever, Legal Director
Friends of the Earth
2150 Allston Way, Suite 360
Berkeley, CA 94704
510-900-3144 (phone) 510-900-3155 (fax)
foefoia17@gmail.com

Benjamin Schreiber
1101 15th St. N.W. 11th Floor
Washington, D.C. 20005
202-783-7400 (phone) 202-783-0444 (fax)
foefoia17@gmail.com

(Providing an email address allows DOI and its bureaus/offices to communicate with you electronically when appropriate. It will also ensure that you receive an email confirmation of our receipt of your request.)

Confirm E-mail Address *
foefoia17@gmail.com

Your Organization
Friends of the Earth

Are you filing the request on behalf of another party? *
No

If so, who are you filing the request on behalf of?

Contact Information Certification
* I Certify That The Above Statement(S) Concerning Who I Am Filing The Request On Behalf Of Are True And Correct To The Best Of My Knowledge And Belief. If I Want To Receive Greater Access To Records About A Person I Represent, I Will Submit Proof That The Person Consents To The Release Of The Records To Me, As Discussed In 43 C.F.R. § 2.9.

Your Request:

Note: This section corresponds with 43 C.F.R. Part 2, Subpart B.

Bureau/Office *
Please select which bureau or office you would like to receive your request.
Relevant park, refuge, site or other location:

Departmental Ethics Office

Please describe the information you are seeking so that an employee familiar with the subject area of the request may locate existing record(s) with a reasonable amount of effort. Include descriptive information, time frame to be searched, etc. In order for a record to be considered subject to your FOIA request, it must be in the bureau's or office's possession and control at the time the bureau or office begins its search for responsive records.

Request Description *

Friends of the Earth requests that the Departmental Ethics Office produce the following records within 20 business days regarding Deputy Secretary of the Interior David Bernhardt:

a. Any and all ethics forms, agreements or documentation for Deputy Secretary of the Interior David Bernhardt, including but not limited to: ethics agreements; recusal agreements, lists, or other documentation; written waivers; regulatory exemptions; and a list of Mr. Bernhardt's former clients when he was employed at Brownstein Hyatt Farber Schreck LLP.;

b. The contents of the card listing the the companies Mr. Bernhardt must avoid, which is referenced in the December 21, 2017 *Bloomberg* article titled: "Ex-Industry Lobbyists Win Top Jobs in Agencies They Once Fought";

c. Communications between Edward McDonnell, currently serving as the Designated Agency Ethics Official, and Mr. Bernhardt.

The documents and records we request include any written or typed, recorded, graphic, printed, or audio material of any kind, as well as all other responsive records as that term is defined by FOIA.

Please search all records regarding agency business and do not exclude searches of files, documents, records, emails or communications in the personal custody of Departmental employees, such as personal email, texts, Instagram, Twitter or other accounts. The courts have found that records of official business conducted using unofficial systems or stored outside of official sites are subject to the Federal Records Act and FOIA. [*See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy,* 827 F.3d 145, 149-50 (D.C. Cir. 2016)]

Further, according to National Archives and Records Administration (NARA) Bulletin 2015-02, "Electronic messages created or received in the course of agency business are Federal records." As such, a satisfactory search for responsive records should include a search for records created using any of the

following services: instant messaging/chat function of Bison Connect, Google Chat, Skype for Business, IBM Sametime, Novell GroupWise Messenger, Facebook Messaging, iMessage; Short Message Service and Multimedia Messaging Service on devices, such as Blackberry, Windows, Apple or Android devices; Google Voice, Twitter Direct Message, Slack, Snapchat, WhatsApp, Pigeon, Yammer, Jive, or other internal collaboration networks."

Requester's Communication Preferences *

Electronic communication via email

Please indicate your communication preferences
Document Disclosure Preferences *

Electronic copies via email to foefoia17@gmail.com

Expedited Processing:

Note: This section corresponds with 43 C.F.R. § 2.10 and § 2.20.

Friends of the Earth is not requesting expedited processing; we reserve the right to appeal any delay in providing the requested records.

Fees and Waivers:

Note: This section corresponds with 43 C.F.R. Part 2, Subpart G.
Please be advised that by making a FOIA request, it shall be considered an agreement by you to pay all fees unless you have been granted a fee waiver or specify your willingness to pay fees up to a particular amount. We will confirm this agreement in our acknowledgement letter.
Please select the appropriate statement *

I am requesting a waiver or reduction of fees.

If the bureau processing your request finds that the actual cost will exceed the amount you specified above, the bureau will stop processing the request and consult with you (see 43 C.F.R. 2.49(d)).

To assist in determining my requester category to assess fees, you should know that I am

Affiliated with an educational or noncommercial scientific institution and this request is made for a scholarly or scientific purpose and not for commercial use.

If You are Making This Request in Affiliation with a News Media/Educational or Noncommercial Scientific Institution Please List That Affiliation. Affiliated Organization:

Friends of the Earth

If you are seeking a fee waiver, it is your responsibility to provide detailed information to support your request by addressing all the criteria outlined in 43 C.F.R. 2.48. If you do not submit sufficient justification, your fee waiver request will be denied (see 43 C.F.R. 2.45).
Check the boxes to the right to confirm that you meet the Department's fee waiver criteria

*X Disclosure Of The Information Is In The Public Interest Because It Is Likely To Contribute Significantly To Public Understanding Of The Operations Or Activities Of The Government.

*X Disclosure Of The Information Is Not Primarily In My Commercial Interest.

Please explain why your request for a waiver of fees or a reduction in fees is justified.

As a non-profit organization, Friends of the Earth requests a waiver of all fees incurred in providing these records. Disclosure of the requested information "is in the public interest because it is likely to contribute significantly to the public understanding of the activities of the government regarding the management of public lands and resources and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(iii).

The documents requested "concern the operations or activities of the federal government" because they provide important information on how Interior is managing potential conflicts of interest and ethics violations with regards to high level officials who worked in the private sector with interests that have a stake in decisions currently under consideration by DOI.

Friends of the Earth will work to disseminate this information broadly. Friends of the Earth is a non-profit organization with a membership and activist list of approximately 1 million people across all 50 states. Friends of the Earth is primarily engaged in information dissemination, public education and advocacy on environmental issues. Friends of the Earth will be taking numerous steps to disseminate the requested information to the public, and has a demonstrated and longstanding capacity to do so. We typically disseminate similar information through direct communication to journalists and other members of the media, through press releases, through newsletters and email alerts to all of our members, through our website, through public meetings, and through other legislative and executive fora.

"Disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject" because the information being requested is new and it has not been publicly reported on. The information being requested will allow the public to understand the potential conflicts of interest high level officials have due to their work in the private sector, and how Interior is working to mitigate these issues. Potential conflicts with regards to David Bernhardt have been reported in numerous media outlets, including *Bloomberg*, *The Washington Post*, *CNN*, *High Country News*, and *The New York Times*. What is missing from these reports is information on how DOI is working to mitigate the potential conflicts. The requested documents will fill in these gaps in public knowledge.

"The public's understanding of the subject in question will be enhanced to a significant extent by the disclosure" because it will provide the public with knowledge of companies, interests, and issues where there could be conflicts of interest with regards to Mr. Bernhardt, and the recusals, waivers, and other means the Departmental Ethics Office is using to mitigate for these conflicts.

Friends of the Earth has no commercial interest that will be furthered by this request. As such, we have been granted fee waivers by the Department of the Interior for similar requests in the past.

If our request for a fee waiver is denied and any expenses associated with this request are in excess of $50.00, please obtain our approval before any such charges are incurred. Disclosure of the requested information would inform the public of governmental activities affecting their safety, health and environment. Friends of the Earth is a not-for-profit charitable organization with no commercial interest in the information requested and has relevant expertise in the areas of environment, public lands, human health and environmental law.

Note: Privacy Act requests must be submitted in writing in accordance with instructions in the Privacy Act notice. The Privacy Act Officer may require you to submit a signed and notarized statement indicating that you are the individual to whom the records pertain and that you understand it is a misdemeanor punishable by a fine up to $5,000 to knowingly and willfully seek or obtain records about another individual under false pretenses.

Label: "SOL FOIA 2018-00129 addendum"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:6 (1 conversations)

Created: 08-24-2018 at 09:19 AM

Conversation Contents

NEC Meeting

David Bernhard (b) (6) @ios.doi.gov>

From: David Bernhardt (b) (6) @ios.doi.gov>
Sent: Tue Aug 21 2018 06:58:24 GMT-0600 (MDT)
To: edward.mcdonnell@sol.doi.gov
Subject: NEC Meeting

Today, NEC is hosting a California Water PCC. The proposed agenda is below.

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These agenda matters are not particular matters involving specific parties. Moreover, my 502 regulatory obligations have passed, and the Trump pledge does not apply to Westlands Water District - my only former relevant CA water client -unless my former firm is representing them on the particular matter involving specific parties, which is not the case.

Please review and advise.

Meeting Agenda

I. Introduction
- National Economic Council

II. Central Valley Project
- Department of the Interior

III. Biological Opinions
- Department of the Interior
- National Marine Fisheries Service

IV. Next Steps

V. Conclusion

Sent from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent: Tue Aug 21 2018 09:35:34 GMT-0600 (MDT)
To: "Bernhardt, David" (b) (6) @ios.doi.gov>
CC: Daniel Jorjani <daniel.jorjani@sol.doi.gov>, Scott De La Vega <scott.delavega@sol.doi.gov>, Heather Gottry

<heather.gottry@sol.doi.gov>

Subject: Re: NEC Meeting

Hi David,

Thank you for discussing today's NEC meeting on CA Water PCC. As we discussed in my office, your ethics recusals do not prohibit your participation in the meeting.

As you are aware, you are beyond the 1-year covered relationship period under 5 CFR 2635.502 and are therefore subject only to the Trump administration ethics pledge restrictions.

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Please let me know if you have any questions or would care to discuss, or if additional information becomes available that you would like me to consider.

Thank you very much,
Ed

- Stewardship for America with Integrity and Excellence -

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Ed McDonnell

Deputy Director, Ethics Law and Policy
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior

Located at:

Main Interior Building
Room 5313
Office: (202) 208-5916
Cell (b) (6) [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

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"Bernhardt, David" (b) (6) [redacted]@ios.doi.gov>

From:	"Bernhardt, David" (b) (6) [redacted]@ios.doi.gov>
Sent:	Tue Aug 21 2018 09:59:26 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject:	Re: NEC Meeting

Thank you Sir.

On Tue, Aug 21, 2018 at 11:35 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

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> Deputy Director, Ethics Law and Policy
> Departmental Ethics Office
> Office of the Solicitor
> U.S. Department of the Interior
>
> Located at:
>
> Main Interior Building
> Room 5313
> Office: (202) 208-5916
> Cell (b) (6) [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

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--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW

Washington, D.C. 20240
(202) 208-6291

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"Jorjani, Daniel" <daniel.jorjani@sol.doi.gov>

From:	"Jorjani, Daniel" <daniel.jorjani@sol.doi.gov>
Sent:	Tue Aug 21 2018 10:08:54 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
CC:	"Bernhardt, David" (b) (6) t@ios.doi.gov>, Scott De La Vega <scott.delavega@sol.doi.gov>, Heather Gottry <heather.gottry@sol.doi.gov>
Subject:	Re: NEC Meeting

Ed - Superb value creation. Much appreciated. Dan

Daniel H. Jorjani
Principal Deputy Solicitor
U.S. Department of the Interior
Main Interior Building, Suite 6356
202-219-3861 (Voice)
(b) (6) **(Cell)**
daniel.jorjani@sol.doi.gov

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Sent from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent: Tue Aug 21 2018 10:13:48 GMT-0600 (MDT)
To: "Jorjani, Daniel" <daniel.jorjani@sol.doi.gov>
Subject: Re: NEC Meeting

Thanks, Dan!

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On Tue, Aug 21, 2018 at 12:08 PM, Jorjani, Daniel <daniel.jorjani@sol.doi.gov> wrote:

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Principal Deputy Solicitor
U.S. Department of the Interior
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Sent from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent: Tue Aug 21 2018 10:14:04 GMT-0600 (MDT)
To: "Bernhardt, David (b) (6) @ios.doi.gov>
Subject: Re: NEC Meeting

Thank you, David!

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Label: "SOL FOIA 2018-00129 addendum"

Created by:edward.mcdonnell@sol.doi.gov

Total Messages in label:6 (1 conversations)

Created: 08-24-2018 at 09:19 AM

Conversation Contents

NEC Meeting

David Bernhardt (b) (6) @ios.doi.gov>

From: David Bernhardt <(b) (6) ios.doi.gov>
Sent: Tue Aug 21 2018 06:58:24 GMT-0600 (MDT)
To: edward.mcdonnell@sol.doi.gov
Subject: NEC Meeting

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Please review and advise.

Meeting Agenda

I. Introduction
- National Economic Council

II. Central Valley Project
- Department of the Interior

III. Biological Opinions
- Department of the Interior
- National Marine Fisheries Service

IV. Next Steps

V. Conclusion

Sent from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent: Tue Aug 21 2018 09:35:34 GMT-0600 (MDT)
To: "Bernhardt, David" (b) (6) ios.doi.gov>
CC: Daniel Jorjani <daniel.jorjani@sol.doi.gov>, Scott De La Vega <scott.delavega@sol.doi.gov>, Heather Gottry

<heather.gottry@sol.doi.gov>

Subject: Re: NEC Meeting

Hi David,

Thank you for discussing today's NEC meeting on CA Water PCC. As we discussed in my office, your ethics recusals do not prohibit your participation in the meeting.

As you are aware, you are beyond the 1-year covered relationship period under 5 CFR 2635.502 and are therefore subject only to the Trump administration ethics pledge restrictions.

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Please let me know if you have any questions or would care to discuss, or if additional information becomes available that you would like me to consider.

Thank you very much,
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Ed McDonnell

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Office of the Solicitor
U.S. Department of the Interior

Located at:

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Cell (b) (6) [redacted]

E-mail: edward.mcdonnell@sol.doi.gov

Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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"Bernhardt, David" <(b) (6) @ios.doi.gov>

From: "Bernhardt, David" (b) (6) @ios.doi.gov>
Sent: Tue Aug 21 2018 09:59:26 GMT-0600 (MDT)
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Subject: Re: NEC Meeting

Thank you Sir.

On Tue, Aug 21, 2018 at 11:35 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

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--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW

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(202) 208-6291

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"Jorjani, Daniel" <daniel.jorjani@sol.doi.gov>

From:	"Jorjani, Daniel" <daniel.jorjani@sol.doi.gov>
Sent:	Tue Aug 21 2018 10:08:54 GMT-0600 (MDT)
To:	"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
CC:	"Bernhardt, David (b) (6) t@ios.doi.gov>, Scott De La Vega <scott.delavega@sol.doi.gov>, Heather Gottry <heather.gottry@sol.doi.gov>
Subject:	Re: NEC Meeting

Ed - Superb value creation. Much appreciated. Dan

Daniel H. Jorjani
Principal Deputy Solicitor
U.S. Department of the Interior
Main Interior Building, Suite 6356
202-219-3861 (Voice)
(b) (6) **(Cell)**
daniel.jorjani@sol.doi.gov

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On Tue, Aug 21, 2018 at 11:35 AM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:

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Sent from my iPhone

"McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>

From: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Sent: Tue Aug 21 2018 10:13:48 GMT-0600 (MDT)
To: "Jorjani, Daniel" <daniel.jorjani@sol.doi.gov>
Subject: Re: NEC Meeting

Thanks, Dan!

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On Tue, Aug 21, 2018 at 12:08 PM, Jorjani, Daniel <daniel.jorjani@sol.doi.gov> wrote:

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U.S. Department of the Interior
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Sent from my iPhone

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Sent:	Tue Aug 21 2018 10:14:04 GMT-0600 (MDT)
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On Tue, Aug 21, 2018 at 11:59 AM, Bernhardt, Davi (b) (6) @ios.doi.gov> wrote:

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> > There is no indication that any member of BHFS will be at the meeting, nor do you believe that any party matters in which BHFS is or represents a party will be discussed. Additionally, there is no indication that any of your former clients (again, this does not include Westlands, since Westlands is a state entity and therefore not considered a former client under the pledge) will be at the meeting, nor is there any indication that any party matters in which any former client (under the pledge) is or represents a party will be discussed. (For example, even if the BIOPs for the CVP and/or CWF could be considered party matters, neither BHFS, nor any of your former clients under the pledge, is or represents a party to those BIOPs.) Of course, if any of these situations should arise, you should not participate in that portion of the meeting.
> >
> > Please let me know if you have any questions or would care to discuss, or if additional information becomes available that you would like me to consider.

case.

Please review and advise.

Meeting Agenda

I. Introduction
- National Economic Council

II. Central Valley Project
- Department of the Interior

III. Biological Opinions
- Department of the Interior
- National Marine Fisheries Service

IV. Next Steps

V. Conclusion

Sent from my iPhone

--

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